VOLUME IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1956~~ 1957

No. ~~131~~ 9

HOWARD LAWN, PETITIONER,

vs.

UNITED STATES OF AMERICA

No. ~~133~~ 10

WILLIAM GIGLIO AND FRANK LIVORSI,
PETITIONERS,

vs.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

NO. 131 PETITION FOR CERTIORARI FILED JUNE 4, 1956
NO. 133 PETITION FOR CERTIORARI FILED JUNE 6, 1956
CERTIORARI GRANTED OCTOBER 15, 1956

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 131

HOWARD LAWN, PETITIONER,

vs.

UNITED STATES OF AMERICA

No. 133

WILLIAM GIGLIO AND FRANK LIVORSI,
PETITIONERS,

vs.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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[fol. 2761] **SUPPLEMENT TO APPENDIX TO APPELLANTS' BRIEF**

[fol. 2762] IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

HOWARD LAWN

JUDGMENT—December 14, 1955

(No. C142-72)

On this 14th day of December, 1955 came the attorney for the government and the defendant appeared in person and by counsel,

[fol. 2763] It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by a jury of the offense of wilfully and knowingly attempting to defeat and evade a large part of income taxes due and owing the United States by William Giglio and American Brands for the calendar year 1946, (Title 26 Sec. 145 (b) and Title 18, Sec. 2 U. S. C.) and conspiracy so to do. (Title 18, Sec. 371 U. S. C.) as charged in counts 7, 9, 10 and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One Year And One Day on each of counts 7, 9, and 10 to run concurrently.

Paroled in custody of his attorney pending appeal.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Lawrence E. Walsh, United States District Judge.

[fol. 2764] In United States District Court for the Southern District of New York

Defendant's Requests to Charge

#5

In determining the credibility of witnesses who have testified at this trial, you must not allow yourselves to be persuaded to credence by the fact that any particular witness testified at the instance of the prosecution, for Government witnesses are not entitled to any more credence than other witnesses; nor is the testimony of any Government officer or agent entitled to any greater weight because of his official status in determining any conflict in testimony between that Government officer or agent and any other witness.

[Request denied, exception taken—Appendix, p. 2676]

By Mr. Wessel:

Q. I show you, Mr. Cary, Government's Exhibit 10 for identification and ask you if you can tell me if that is a corporation income tax return received in the regular and ordinary course of the business of your office?

A. Yes, sir.

Mr. Wessel: I offer it in evidence.

Mr. Stryker: I object to this document on the ground that it is outside the scope of the bill of particulars.

We asked for a bill of particulars with regard to the income of these various corporations. Now here is one, Lawn International; it is not given in the bill at all.

[fol. 2765] Perhaps your Honor would like to glance at that bill to see if I am correct.

Mr. Wessel: I can explain precisely why this document is offered in evidence, if your Honor please. I should do it out of the hearing of the jury.

The Court: All right, come up to the bench.

(Discussion at the bench not transcribed.)

The Court: I will receive it.

(Government's Exhibit 10 for identification received in evidence.)

Mr. Wessel: Government's Exhibit 10 is the corporation income tax return for a company not listed in the indictment or in the bill of particulars, Lawn International, Inc. A reference will be made to it at a later time, but it is not the subject matter of any charge in this case at this time.

(Exhibit 10 handed to jury.)

[fol. 2766] [File endorsement omitted]

[fol. 2767] **APPENDIX TO BRIEF FOR UNITED STATES—Filed July 17, 1953**

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES

v.

WILLIAM J. GIGLIO

DOCKET ENTRIES

Information No. C 133-194

Violation:

Title 26 Sec 145(a) USC.

Failure to pay any part of income tax for 1946 except $4000. as estimated tax.

One count.

Date	Proceedings
9/14/50	Filed Information. Ordered sealed. EDWARD WEINFELD, *J.*
9/19/50	Information ordered opened. WEINFELD, *J.*
9/22/50	Filed notice of appearance by James A. Ronayne, 120 Bway, NYC as atty for defendant.
9/25/50	Pleading adjd to 10/2/50. Bail fixed at $5000. to cover this information and C 133/195. Paroled until 4 PM today to give bail. Deft. ordered photographed and fingerprinted. WEINFELD, *J.*

Date	Proceedings
9/29/50	—Filed affdt & order permitting deft. W J Giglio to leave jurisdiction of this Court. COXE, *J.*

[fol. 2770] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES

v.

HOWARD LAWN
LOUIS J. ROTH
WILLIAM J. GIGLIO
FRANK S. LIVORSI

DOCKET ENTRIES

Information No. C 133-195

Violation:

Title 26 Sec 145(a) USC.

Unlawfully causing American Brands Corp. to fail to pay any part of income tax for 1946 except $100.

One count.

Date.	Proceedings
9/14/50	—Filed Information. Ordered sealed. EDWARD WEINFELD, *J.*
9/18/50	—Filed affidavit for bench warrants.
9/18/50	—Bench warrants ordered and information re-sealed. WEINFELD, *J.*
9/18/50	—Bench warrants issued for Giglio and Livorsi.
9/19/50	—Information ordered opened. WEINFELD, *J.*
[fol. 2771] 9/25/50	—Filed notice of appearance by Lewis Landes, 20 W 43 St, NYC as atty for defendant Louis J. Roth
9/22/50	—Filed notice of appearance by James A. Ronayne, 120 Bway, NYC as atty for defendants Frank S. Livorsi and William Giglio.
9/25/50	—All four defts. appear. Bench warrants vacated. Pleadings adjd to 10/2/50. Bail for William J. Giglio fixed at $5000. to cover this informa-

Date	Proceedings
	tion and C 133/194. Paroled until 4 PM today to give bail. Deft. ordered photographed and fingerprinted.
9/25/50	—Frank S. Livorsi—Bail fixed at $10,000. to cover this information and C 133/196. Paroled until 4 PM today to give bail. Deft. ordered photographed and fingerprinted.
9/25/50	—Howard Lawn and Louis J. Roth—Bail fixed at $1000. for each deft. Paroled until 4 PM today to give bail. WEINFELD, *J.*
9/27/50	—Filed affdt & order permitting deft. Howard Lawn to leave jurisdiction of this court. WEINFELD, *J.*
9/29/50	—Filed affdt & order permitting deft. Giglio to leave jurisdiction of this court. COXE, *J.*
10/ 2/50	—All defendants plead not guilty. Bail continued. BONDY, *J.*
10/ 3/50	—Filed affdt & order permitting deft. Wm J Giglio to leave the jurisdiction of this Court. GODDARD, *J.*

[fol. 2776] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES

v.

FRANK S. LIVORSI

DOCKET ENTRIES

Information No. C 133-196

Violation:

Title 26 Sec 145(a) USC.

Failure to pay any part of income tax for 1946 except $4000. as estimated tax.

One count.

Date	Proceedings
9/14/50	Filed Information. Ordered sealed. EDWARD WEINFELD, *J.*
9/19/50	Information ordered opened. WEINFELD, *J.*
9/22/50	Filed notice of appearance by James A. Ronayne, 120 Bway NYC. Atty
9/25/50	Pleading adjd to 10/2/50. Bail fixed at $10,000. to cover this information and C 133/195. Paroled until 4 PM today to give bail. Deft. ordered photographed and fingerprinted. WEINFELD, *J.*
10/ 2/50	Pleads not guilty. Bail continued. BONDY, *J.*

[fol. 2778] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES

v.

LOUIS J. ROTH

DOCKET ENTRIES

Indictment No. C 139/206

Violation:

Title 26 Sec 145b USC.

Unlawfully attempting to evade payment of large part of income tax due the U S for 1945.

One count.

Date	Proceedings
9/15/52	Filed Indictment—Ordered Sealed. RYAN, *D.J.*
10/20/52	Indictment ordered opened on motion of Asst. U S Attorney Leone. Pleads not guilty. Bail $5000. to cover this indictment and C 139-304, 5, 6, 7 and 8. Paroled until 4 PM to give bail. Deft. ordered photographed and fingerprinted. Deft. allowed until 12/15/52 for motions. MCGOHEY, *J.*

Date	Proceedings
12/10/52	Filed substitution of Garey & Garey, Attys. 63 Wall St. NYC. So ordered. W V Connell, Clerk.
12/10/52	Filed affdt and notice of motion for an order to consolidating C 139/206, C 139/304 to 308 for trial.

[fol. 2781] In United States District Court for the Southern District of New York

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The United States

v.

William Giglio
Louis J. Roth

Docket Entries

Indictment No. C 139/304

Violation:

Title 26, Sec. 3793(b)(1) U S Code

Unlawfully aid, assist in, procure, counsel and advise the preparation and presentation of false and fraudulent income tax returns.

Two counts.

Date	Proceedings
10/20/52	Filed indictment
10/20/52	Louis J. Roth pleads not guilty. See C 139/206 for bail.
	William Giglio pleads not guilty. Bail $5000. to cover this indictment and C 130/306, 7 and 8. Paroled until 4 PM to give bail. Defts. ordered photographed and fingerprinted. Defts. allowed until 12/15/52 for motions. McGohey, *J.*
10/20/52	Filed notice of appearance by J. Gerard Cregan, 50 Bway NYC. Atty for William Giglio.

[fol. 2785] In United States District Court for the Southern District of New York

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The United States

v.

Frank Livorsi
Louis J. Roth

Docket Entries

Indictment No. C 139/305

Violation:

Title 26 Sec 145(b) USC.

Unlawfully attempting to evade payment of large part of income taxes due and owing the U S by Frank Livorsi.

One count.

Date	Proceedings
10/20/52	Filed indictment.
10/20/52	Louis J. Roth pleads not guilty. See C 139/206 for bail.
	Frank Livorsi pleads not guilty. Bail $5000. to cover this indictment and C 139/307. Paroled until 4 PM to give bail. Dfts. ordered photographed and fingerprinted. Defts. allowed until 12/15/52 for motions. McGohey, *J.*
10/20/52	Filed notice of appearance by J Gerard Cregan, 50 Bway NYC as atty for Frank Livorsi.

[fol. 2789] In United States District Court for the Southern District of New York

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The United States

v.

William Giglio
Louis J. Roth

Docket Entries

Indictment No. C 139/306

Violation:

Title 26 Sec 145(b) USC.

Unlawfully attempting to evade payment of large part of income tax due the U S by William Giglio.

One count.

Date	Proceedings
10/20/52	Filed indictment.
10/20/52	Louis J. Roth pleads not guilty. See C 139/206 for bail. William Giglio pleads not guilty. See C 139/304 for bail. Defts. ordered photographed and fingerprinted. Defts. allowed until 12/15/52 for motions. McGohey, J.
10/20/52	Filed notice of appearance by J Gerard Cregan, 50 Bway NYC as atty for William Giglio.
12/10/52	Filed substitution of Garey & Garey, 63 Wall St. NYC as attys for Louis J. Roth. So ordered. W V Connell, Clerk.

[fol. 2793] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES

v.

WILLIAM GIGLIO—Cts 1-3-4
FRANK LIVORSI—Cts 2-3-4
HOWARD LAWN—Cts 1-3-4
LOUIS J. ROTH—Cts 1-3-4
AMERICAN BRANDS CORPORATION—Ct 4

DOCKET ENTRIES

Indictment No. C. 139/307

Violation:

Title 26 Sec 145b and Title 18 Sec 371 U S Code.

Unlawfully attempting to evade payment of large part of income taxes due the U S and conspiracy.

Four counts.

Date	Proceedings
10/20/52	Filed indictment
10/20/52	Louis J. Roth pleads not guilty. See C 139/206 for bail.
	Frank Levorsi pleads not guilty. See C 139/305 for bail.
	William Giglio pleads not guilty. See C 139/304 for bail.
	Howard Lawn pleads not guilty. Bail $5000. Paroled until 4 PM to give bail. Defts. ordered photographed and fingerprinted.

[fol. 2798] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES

v.

WILLIAM GIGLIO
LOUIS J. ROTH

DOCKET ENTRIES

Indictment No. C 139/308

Violation:

Title 26 Secs 145(b) & 3793(b)(1) USC.

Unlawfully attempting to evade a large part of income taxes due by certain corporations to the U S and aiding and abetting in presentation of false returns.

Two counts.

Date	Proceedings
10/20/52	Filed indictment.
10/20/52	William Giglio pleads not guilty. Bail See C 139/304.
	Louis J. Roth pleads not guilty. Bail See C 139/206.
	Deft. allowed until 12/15/52 for motions. McGOHEY, J.
	Defts ordered photographed and fingerprinted.
10/20/52	Filed notice of appearance by J Gerard Cregan, 50 Bway NYC as atty for William Giglio.

[fol. 2802] IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

LOUIS J. ROTH, Defendant.

INDICTMENT C 139-206

The Grand Jury charges:

1. On or about the 16th day of September, 1946, at the Southern District of New York, Louis J. Roth, the defendant, having prepared a false and fraudulent income tax return in his own name for the calendar year 1945, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1945 by filing and causing to be filed with the Collector of Internal Revenue for the First District of New York, by mail from the Southern District of New York, said false and fraudulent income tax return, wherein he stated that his net income for said calendar year was $43,762.32, and that the amount of tax due and owing thereon was the sum of $19,906.13, whereas, as he then and there well knew his net income for said calendar year was $114,103.32, upon which he owed to the United States of America an income tax of $76,180.18. (Title 26, Section 145b, United States Code.)

Myles J. Lane, United States Attorney.

T. Wylie Kinney, Foreman.

[fol. 2803] IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

WILLIAM GIGLIO and LOUIS J. ROTH, Defendants.

INDICTMENT C 139-304

The Grand Jury charges:

That on or about the 12th day of September, 1947, at the Southern District of New York, William Giglio and Louis J. Roth, the defendants, in connection with a matter arising under the Internal Revenue Laws, did unlawfully, wilfully and knowingly, aid, assist in, procure, counsel, and advise the preparation and presentation of a false and fraudulent return, to wit, a partnership return of income of the Eatsum Food Products Company, Limited for the fiscal year beginning June 1, 1945 and ending May 31, 1946.

(Title 26, Section 3793(b)(1), United States Code.)

Count Two

The Grand Jury further charges:

That on or about the 12th day of September, 1947, at the Southern District of New York, William Giglio and Louis J. Roth, the defendants, in connection with a matter [fol. 2804] arising under the Internal Revenue Laws, did unlawfully, wilfully and knowingly, aid, assist in, procure, counsel and advise the preparation and presentation of a false and fraudulent return, to wit, a partnership return of income of the Tavern Fruit Juice Company for the period beginning April 16, 1945 and ending March 31, 1946.

(Title 26, Section 3793(b)(1), United States Code.)

Myles J. Lane, United States Attorney.

T. Wylie Kinney, Foreman.

[fol. 2805] IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

FRANK LIVORSI and LOUIS J. ROTH

INDICTMENT C 139-305

The Grand Jury charges:

On or about the 15th day of September, 1947, at the Southern District of New York, Frank Livorsi and Louis J. Roth, the defendants, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by Frank Livorsi to the United States of America, for the calendar year 1946, by filing and causing to be filed with the Collector of Internal Revenue for the Third Collection District of New York, a false and fraudulent income tax return, wherein they stated that the net income of Frank Livorsi for said calendar year was the sum of $289,515.00, and that the amount of tax due and owing thereon was the sum of $236,003.65, whereas as they then and there well knew, the net income of Frank Livorsi for the said calendar year was the sum of $433,158.25, upon which said net income Frank Livorsi owed to the United States of America an income tax of $348,383.06.

(Section 145(b), Title 26, United States Code.)

Myles J. Lane, United States Attorney.

T. Wylie Kinney, Foreman.

[fol. 2806] IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

WILLIAM GIGLIO and LOUIS J. ROTH

INDICTMENT C 139-306

The Grand Jury charges:

On or about the 15th day of September, 1947, at the Southern District of New York, William Giglio and Louis J. Roth, the defendants, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by William Giglio to the United States of America, for the calendar year 1946, by filing and causing to be filed with the Collector of Internal Revenue for the Third Collection District of New York, a false and fraudulent income tax return, wherein they stated that the net income of William Giglio for said calendar year was the sum of $286,690.01, and that the amount of tax due and owing thereon was the sum of $232,978.73, whereas as they then and there well knew, the net income of William Giglio for the said calendar year was the sum of $430,333.27, upon which said net income William Giglio owed to the United States of America as income tax of $345,508.62.

(Section 145(b), Title 26, United States Code.)

Myles J. Lane, United States Attorney.

T. Wylie Kinney, Foreman.

[fol. 2807] IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

WILLIAM GIGLIO, FRANK LIVORSI, HOWARD LAWN, LOUIS J. ROTH, AMERICAN BRANDS CORPORATION, Defendants.

INDICTMENT C 139-307

The Grand Jury charges:

1. From on or about the 1st day of September, 1947, and up to and including the date of the filing of this indictment, at the Southern District of New York, William Giglio, Howard Lawn and Louis J. Roth, the defendants did wilfully and knowingly attempt to defeat and evade the payment of a large part of the taxes due and owing by William Giglio to the United States of America for the calendar year 1946, in that they did conceal the assets of William Giglio (Title 26, Section 145(b) and Title 18, Section 2, United States Code).

Second Count

The Grand Jury further charges:

1. From on or about the 1st day of September, 1947, and up to and including the date of the filing of this indict-
[fol. 2808] ment, at the Southern District of New York, Frank Livorsi, the defendant, did wilfully and knowingly attempt to defeat and evade the payment of a large part of the tax due and owing by him to the United States of America for the calendar year 1946, in that he did conceal his assets (Title 26, Section 145(b), United States Code).

Third Count

The Grand Jury further charges:

1. From on or about the 1st day of January, 1946, and up to and including the date of the filing of this indictment, at the Southern District of New York, William Giglio,

Frank Livorsi, Howard Lawn, and Louis J. Roth, the defendants, did wilfully and knowingly attempt to defeat and evade the payment of a large part of the taxes due and owing by American Brands Corporation for the calendar year 1946, in that they did misappropriate, convert, and divert assets of the aforementioned corporations to their own use and benefit (Title 26, Section 145(b), and Title 18, Section 2, United States Code).

Fourth Count

The Grand Jury further charges:

1. From on or about the 1st day of July, 1945, and continuously thereafter up to and including the date of the filing of this indictment, at the Southern District of New York, William Giglio, Frank Livorsi, Howard Lawn, Louis J. Roth and American Brands Corp., the defendants, did wilfully and knowingly combine, conspire, confederate, and agree together and with each other and with divers other [fol. 2809] persons to the Grand Jurors unknown to commit an offense against the United States of America, to wit, to violate the provisions of Section 145(b), Title 26, United States Code.

2. It was a part of the said conspiracy that the defendants would defeat and evade a large part of the taxes due and owing by the said defendants individually and by American Brands Corporation, American Brands Wholesale Corporation, and American Trucking and Forwarding Corporation.

3. It was further a part of the said conspiracy that the defendants would defeat and evade the payment of a large part of the taxes due and owing by said defendants individually and by American Brands Corporation, American Brands Wholesale Corporation, American Trucking and Forwarding Corporation.

4. It was further part of the said conspiracy that the defendants would organize and cause to be organized American Brands Corporation, American Brands Wholesale Corporation, American Trucking and Forwarding Corporation, American Agar Corporation and American Sweets Corporation.

5. It was further a part of the said conspiracy that the defendants would file and cause the filing of delinquent income tax returns long after the due date for the filing of said returns for said defendants individually and for American Brands Corporation, American Brands Wholesale Corporation, American Trucking and Forwarding [fol. 2810] Corporation, American Agar Corporation, and American Sweets Corporation.

6. It was further a part of said conspiracy that the defendants would cause American Brands Corporation to fail to withhold taxes on salaries or wages paid to the defendants.

7. It was further a part of the said conspiracy that the defendants would misappropriate, convert and divert assets of the aforesaid corporations.

8. It was further a part of the said conspiracy that the defendants would falsify, destroy and fail to keep and preserve books and records of the operations of the aforesaid corporations and of Eatsum Food Products Co., Limited, and Tavern Fruit Juice Company.

9. It was further a part of the said conspiracy that the defendants would cause a consolidated corporation income tax return in the name of American Brands Corporation to be filed with the Collector of Internal Revenue for the Third Collection District of New York.

10. It was further a part of the said conspiracy that the defendants would file and cause to be filed false and fraudulent income tax returns for the said defendants individually and for American Brands Corporation, American Brands Wholesale Corporation, American Trucking and Forwarding Corporation, American Agar Corporation and American Sweets Corporation.

[fol. 2811] 11. It was further a part of the said conspiracy that the defendants would file and cause to be filed false returns of partnership income for the Eatsum Food Products Co., Limited, and Tavern Fruit Juice Company.

12. It was further a part of the said conspiracy that the defendants would conceal assets of William Giglio and Frank Livorsi for the purpose of evading the payment of taxes.

Overt Acts

1. In pursuance of the said conspiracy and to effect the objects thereof, at the Southern District of New York, on or about the 15th day of September, 1947, William Giglio and Louis J. Roth, the defendants, filed and caused to be filed with the Collector of Internal Revenue for the Third Collection District of New York, a partnership return of income for the fiscal year beginning June 1, 1945 and ending May 31, 1946 of Eatsuin Food Products Co., Limited.

2. Further in pursuance of the said conspiracy and to effect the objects thereof, at the Southern District of New York, on or about the 15th day of September, 1947, William Giglio and Louis J. Roth, the defendants, filed and caused to be filed with the Collector of Internal Revenue for the Third Collection District of New York, a partnership return of income for the period beginning April 16, 1945 and ending March 31, 1946 of Tavern Fruit Juice Co.

3. Further in pursuance of the said conspiracy and to effect the objects thereof, at the Southern District of New [fol. 2812] York, during the month of March or April 1946, William Giglio and Louis J. Roth, the defendants visited the office of Bernard Bereu.

4. And further in pursuance of the said conspiracy and to effect the objects thereof, at the Southern District of New York, on or about the 11th day of September, 1947, Howard Lawn, Louis J. Roth and William Giglio, the defendants, had a conversation with one Solomon Tepper.

5. And further in pursuance of the said conspiracy and to effect the objects thereof, at the Southern District of New York, on or about the 28th day of October, 1946, Louis J. Roth, the defendant, did file and cause to be filed with the Collector of Internal Revenue for the Third Collection District of New York, an individual income tax return for one Mario Betancourt.

6. And further in pursuance of the said conspiracy and to effect the objects thereof, at the Southern District of New York, on or about the 1st day of March, 1946, Louis J. Roth, the defendant and one Samuel Starr had a conversation.

7. And further in pursuance of the said conspiracy and to effect the objects thereof, at the Southern District of

New York, on or about the 1st day of September, 1946, Louis J. Roth, the defendant, and one Mario Betancourt had a conversation.

8. And further in pursuance of the said conspiracy and to effect the objects thereof, at the Southern District of [fol. 2813] New York, on or about the 15th day of September, 1947, William Giglio and Louis J. Roth, the defendants, did file and cause to be filed with the Collector of Internal Revenue for the Third Collection District of New York, a consolidated corporation income tax return of American Brands Corporation, for the calendar year 1946.

9. And further in pursuance of the said conspiracy and to effect the objects thereof, at the Southern District of New York, on or about the 15th day of September, 1947, William Giglio, the defendant, did file and cause to be filed with the Collector of Internal Revenue for the Third Collection District of New York, his individual return of income for the calendar year 1946.

10. And further in pursuance of the said conspiracy and to effect the objects thereof, at the Southern District of New York, on or about the 15th day of September, 1947, the defendant Frank Livorsi, did file and caused to be filed with the Collector of Internal Revenue for the Third Collection District of New York, his individual return of income for the calendar year 1946. (Title 18, Section 371, United States Code.)

Myles J. Lane, United States Attorney.

T. Wylie Kinney, Foreman.

[fol. 2814] IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

WILLIAM GIGLIO and LOUIS ROTH, Defendants.

INDICTMENT C 139-308

The Grand Jury charges:

1. That on or about the 15th day of September, 1947, at the Southern District of New York, William Giglio and Louis J. Roth, the defendants, did willfully and knowingly attempt to defeat and evade a large part of the income taxes due and owing to the United States of America by American Brands Corporation, American Brands Wholesale Corporation and American Trucking and Forwarding Corporation for the calendar year 1946, by filing and causing to be filed with the Collector of Internal Revenue for the Third Collection District of New York, a false and fraudulent Consolidated Corporation Income Tax Return within the provisions of Sec. 141, Title 26, United States Code, in the name of American Brands Corporation, in which American Brands Corporation, American Brands Wholesale Corporation, American Trucking and Forwarding Corporation, American Sweets Corporation and American Agar Corporation were listed as an affiliated group of corporations, and in which return the defendants [fol. 2815] stated that the net income of American Brands Corporation and its affiliated group of corporations was $261,753.36, and that the tax due and owing thereon was the sum of $104,701.35; whereas, as the defendants then and there well knew, American Brands Corporation, American Brands Wholesale Corporation, American Trucking and Forwarding Corporation, American Sweets Corporation and American Agar Corporation were not an affiliated group of corporations within the provisions of Sec. 141,

Title 26, United States Code, and the net income of American Brands Corporation for the said calendar year was the sum of $289,101.45, upon which said net income American Brands Corporation owed to the United States of America an income tax of $109,858.55, and the net income of American Brands Wholesale Corporation for the said calendar year was the sum of $169,131.09, upon which said net income American Brands Wholesale Corporation owed to the United States of America an income tax of $64,269.81, and the net income of American Trucking and Forwarding Corporation for the said calendar year was the sum of $3,180.16, upon which said net income American Trucking and Forwarding Corporation owed to the United States of America an income tax of $667.83.

[Section 145(b), Title 26, United States Code.]

Second Count

The Grand Jury further charges:

1. That on or about the 15th day of September, 1947, at the Southern District of New York, William Giglio and Louis J. Roth, the defendants, in connection with a matter arising under the Internal Revenue laws, did un- [fol. 2816] lawfully, willfully and knowingly aid, assist in, procure, counsel, and advise the preparation and presentation of a false and fraudulent return, to wit, a Consolidated Corporation Income Tax Return, in the name of American Brands Corporation for the calendar year 1946.

[Section 3793(b)(1), Title 26, United States Code.]

Myles J. Lane, United States Attorney.

T. Wylie Kinney, Foreman.

[fol. 2817] IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

WILLIAM J. GIGLIO.

INFORMATION C 133-194

The United States Attorney charges:

That on or about the 15th day of September, 1947, at the Southern District of New York, William J. Giglio, the defendant, who was then and there a person required by the Internal Revenue Laws of the United States to pay an income tax for the calendar year 1946, did unlawfully, wilfully, and knowingly fail to pay any part thereof, except the sum of $4000 as estimated tax. (Title 26, Section 145(a) United States Code.)

Irving H. Saypol, United States Attorney.

[fol. 2818] IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

HOWARD LAWN, LOUIS J. ROTH, WILLIAM J. GIGLIO and FRANK S. LIVORSI, Defendants.

INFORMATION C 133-195

The United States Attorney charges:

1. That on or about the 15th day of September, 1947, at the Southern District of New York, Howard Lawn, Louis J. Roth, William J. Giglio and Frank S. Livorsi, the defendants, did unlawfully, wilfully and knowingly cause American Brands Corporation, which was then and there a corporation required by the Internal Revenue Laws of the United States to pay an income tax for the calendar

year 1946, to fail to pay any part of the same except the sum of $100.00 (Title 26, Section 145(a), United States Code).

Irving H. Saypol, United States Attorney.

[fol. 2819] In United States District Court
Southern District of New York

United States of America,

v.

Frank S. Livorsi.

Information C 133-196

The United States Attorney charges:

That on or about the 15th day of September, 1947, at the Southern District of New York, Frank S. Livorsi, the defendant, who was then and there a person required by the Internal Revenue Laws of the United States to pay an income tax for the calendar year 1946, did unlawfully, wilfully and knowingly fail to pay any part thereof, except the sum of $4000 as estimated tax. (Title 26, Section 145(a) United States Code.)

Irving H. Saypol, United States Attorney.

[fol. 2820] In United States District Court for the
Southern District of New York

Subpoena Duces Tecum to Louis J. Roth,
Returnable July 14, 1952

The President of the
United States of America

To

Louis J. Roth
Louis J. Roth & Co.
12 East 86th Street
New York, New York

GREETING:

WE COMMAND YOU that all business and excuses being laid aside, you appear and attend before the Grand Inquest of the body of the people of the United States of America for the Southern District of New York, at a District Court to be held at Room 513 in the United States Courthouse, Foley Square, in the Borough of Manhattan, City of New York, on the 14th day of July 1952, at 10:45 o'clock in the forenoon, to testify and give evidence in regard to an alleged violation of Title 18, Section 371 and not to depart the Court without leave thereof, or of the District Attorney, and that you produce at the time and place aforesaid the following: All books and records including general ledgers, accounts receivable, accounts payable, journals, cancelled checks, check stubs, bank statements, and all invoices relating to accounts payable or cash transactions of the following:

1. American Brands Corporation
2. American Agar Corporation

[fol. 2821] 3. American Brands Wholesale Corporation

4. American Sweets Corporation
5. American Trucking and Forwarding Corporation
6. Van Dyke Industrial Corporation
7. Loraine Food Corporation
8. Loraine Food Company
9. Tavern Fruit Juice Company
10. Tavern Fruit Juice Co., Inc.
11. Eatsom Food Products Company
12. Bronx Home Products

And for failure to attend and produce the said documents you will be deemed guilty of contempt of Court and liable to penalties of the law.

Witness, the Honorable John C. Knox, Judge of the District Court of the United States for the Southern District of New York, in the City of New York, on the day of July in the year of our Lord, One Thousand Nine Hundred and Fifty-two

William V. Connell, Clerk.

[fol. 2822] Myles J. Lane,
United States Attorney for the
Southern District of New York.

Note: Report at Room 413. In order to secure your witness fees and mileage, it is necessary that you retain this Subpoena and present the same at the United States Attorney's Office, Room 413, upon each day on which you attend Court as a witness.

Assistant Gerome J. Leone Room 418

Received this writ at New York, N. Y. on Jul 3 1952 and on Jul 7 1952 at 170 Broadway, New York, N. Y., I served it on the within-named Louis J. Roth by leaving a copy thereof or a subpoena ticket with Frederick J. Waters, Attorney.

William A. Carroll, U. S. Marshal, SDNY
By: Samuel Swartz, Deputy U. S. Marshal, SDNY.

Marshal's Fees

Travel ..... $.....
Service ..... $.....

$.....

[fol. 2823] In United States District Court for the Southern District of New York

Subpoena Duces Tecum to Frank Livorsi, Returnable July 15, 1952

To

Frank Livorsi
15 Fulton Avenue
Atlantic Beach, L. I., N. Y.

[Body of subpoena same as to Roth, supra, except return date]

* * * * *

Received this writ at New York, N. Y. on Jul 3 1952 and on Jul 8 1952 at 50 Broadway, New York, N. Y., I served it on the within-named Frank Livorsi by leaving a copy

thereof or a subpoena ticket with J. Garard Cregan, Counsel.

William A. Carroll, U. S. Marshal, SDNY
By: Samuel Swartz, Deputy U. S. Marshal, SDNY.

Marshal's Fees
Travel ..... $.....
Service ..... $.....
$.....

[fol. 2824] In United States District Court for the Southern District of New York

Subpoena Duces Tecum to Howard J. Lawn, Returnable July 15, 1952

To

Howard J. Lawn
274 Lenox Avenue
Long Branch, N. J.

[Body of subpoena same as to Roth, supra, except return date]

* * * * * * *

Received this writ at New York, N. Y. on Jul 3 1952 and on Jul 8 1952 at 50 Broadway, New York, N. Y., I served it on the within-named Howard J. Lawn by leaving a copy thereof or a subpoena ticket with J. Garard Cregan, Counsel.

William A. Carroll, U. S. Marshal, SDNY
By: Samuel Swartz, Deputy U. S. Marshal, SDNY.

Marshal's Fees
Travel ..... $.....
Service ..... $.....
$.....

[fol. 2825] In United States District Court for the Southern District of New York

Subpoena Duces Tecum to William J. Giglio, Returnable July 15, 1952

To

William J. Giglio
43 Comanche Drive
Ocean Port, N. J.

[Body of subpoena same as to Roth, supra, except return date]

* * * * * * *

Received this writ at New York, N. Y. on Jul 3 1952 and on Jul 8 1952 at 50 Broadway, New York, N. Y., I served it on the within-named William J. Giglio by leaving a copy thereof or a subpoena ticket with J. Garard Cregan, Counsel.

Marshal's Fees

Travel ..... $.....
Service ..... $.....

$.....

William A. Carroll, U. S. Marshal, SDNY
By: Samuel Swartz, Deputy U. S. Marshal, SDNY.

[fol. 2826] In United States District Court for the Southern District of New York

Testimony of Louis J. Roth Before Grand Jury, July 14, 1952

Louis J. Roth, called as a witness having first been duly sworn by the Foreman, testified as follows:

By Mr. Leone:

Q. Your full name is, sir——
A. Louis J. Roth.
Q. And your occupation, Mr. Roth?

A. Public accountant.

Q. And you are the owner of Louis J. Roth and Company?

A. Not any more.

Q. Has that gone out of business?

A. We are not operating any more, and we filed liquidation papers.

Q. Now, a subpoena duces tecum was served upon you on July 7th, is that correct, Mr. Roth?

A. Well, through Mr. Waters.

Q. Through Mr. Waters a subpoena was served upon you, requesting that you turn over to this Grand Jury certain books and records, is that correct?

A. Correct.

Q. Have you complied with that subpoena?

A. Well, I am here, but I haven't got any of the books and records.

Q. Did you read the subpoena?

A. Yes.

Q. You have it there. You will see that the first company is American Brands Corporation, is that right, Mr. Roth?

A. That's right.

Q. Have you any of the books and records as asked for in the body of the subpoena, of that corporation?

A. Well, I would like to answer it this way: Only on the word "records"--I have no books, I have no general ledgers, I have no accounts receivable, I have no accounts payable, I haven't any journals, I haven't any cancelled [fol. 2827] checks, I haven't any check-stubs, bank statements or any invoices relating to accounts payable or cash transactions.

But the word "records"—I may have duplicate copies of the corporation income tax return, or photostats, which I gave to my lawyer on another matter. If that is a definition of the word "record," then I have that.

Q. You have the income tax returns?

A. Well, duplicate copies, or a photostat.

Q. But you do not have any of the records as asked for in the body of the subpoena?

A. No. I just want to make sure of the word "record."

Q. In other words, you do not have any of the papers asked for, is that right, that apply?

A. That's right.

Q. American Agar Corporation?

A. The same.

Q. What about the American Brands Wholesale Corporation?

A. The same.

Q. What of American Sweets Corporation?

A. The same.

Q. What of American Trucking and Forwarding Corporation?

A. The same.

Q. Van Dyke Industrial Corporation?

A. The same. I never remember seeing the Van Dyke books.

Q. How about Loraine Food Corporation?

A. No.

Q. How about Loraine Food Company?

A. It sounds like the same thing.

Q. I am asking you if you have those books and records. How about Tavern Fruit Juice Company?

A. No.

Q. Tavern Fruit Juice Company, Inc.?

A. No.

Q. Eatsum Food Products Company?

A. No.

Q. Bronx Home Products?

A. No.

Q. You say you do not have these books at this time, is that correct, Mr. Roth?

A. Well, for a long time——

[fol. 2828] Q. Answer my question. Do you have these books at this time?

A. No, sir.

Q. Did you ever have any of the twelve companies that are enumerated in the subpoena in your possession—and when I use the term "books and records" I mean including general ledgers and accounts receivable, and so forth?

A. Well, I can only answer the question this way: When the companies were operating, there were all the books of all the companies in the office, and I worked on them.

But when you say, did I ever have them, I would say they were in the office of the corporation, excluding some of these names.

Q. Excluding some of the companies, you worked on the books of certain of the companies, is that right?

A. That's right.

Q. Where did you work on those books? Did you work on them at your office, or at the home office of these companies?

A. At the home office of these companies.

Q. Where was that?

A. 19 Rector Street.

Q. And they were all located at the same place?

A. Well, all the books I worked on were there. There was no other place—Excuse me, I want to correct that; I think two of the companies, the books were over in New Jersey.

Q. Which two are those?

A. American Agar.

Q. Yes?

A. And the Loraine Food Corporation.

Q. Did you work on those books in New Jersey?

A. My man—yes, in New Jersey.

Q. In other words, you had someone under your direction work on those books?

A. That's right. However, they may have been brought over to New York, but to the best of my recollection all the work on those companies were done in Jersey.

[fol. 2829] Q. When did you stop working, when is the last time you did work on any of the books of any of these companies, or any of the men under your supervision did any work on those books?

A. I can't give you a date, but I can give you an incident.

Q. Give us your best recollection.

A. When the head of the concern applied for a receivership in New Jersey, the accountant for the receiver came over to the New York office and worked on the books, and I gave him all the information he wanted and needed, and

to my recollection that is the last time I ever had anything to do with the books.

Q. Do you remember that accountant's name, the accountant for the receiver, who he was and what his name was?

A. I don't remember his name, but I can—it is simple—do you have a Manhattan book?

Q. No. That is all right. In other words, your memory could be refreshed?

A. Oh, yes. It is not that I don't want to give you the name, because I can find out the name.

Q. Very well. We must expedite this. Did he take possession of any of the books, or after he worked on them did he leave them at your office or at 19 Rector Street—which was it?

A. I don't recall. I know that he had a New Jersey office. I have a vague idea that before he completed the report there were some items that he wanted explanations on, and I don't recall whether—I recall going up to his office on 23rd Street, at the Metropolitan Tower. His name was Nadell. I remember going up to the Metropolitan Tower, but whether he had the books there or he asked me explanations there from his working papers, I don't recall. [fol. 2830] Q. Do you know where the books of these companies are now?

A. No, sir.

Q. You do not?

A. No, sir.

Q. When is the last time you saw these books?

A. I have to explain it this way: When they gave up the 19 Rector Street offices, I understood that all the books were put into a storage room in the building, because they needed some information about a month or two months after that, and I went down there and I found there was a storage room with all the books of all the companies at 19 Rector Street, in the basement.

Q. You saw the books there, in the basement?

A. Yes.

Q. Who was with you when you went to the storage room?

A. I don't remember. I think they sent over one of the men from New Jersey with a key, and I met him in the lobby, and he opened the door, and I looked for some information for Mr. Nadell and found the information, and the man locked it up. I don't recall the individual.

Q. And that is the last time you saw the books, to the best of your recollection now?

A. Well, I was subpoenaed before a Grand Jury in New Jersey about two weeks ago, and they showed me the check-stub sheet, and that would be the last time I saw it.

The check-stub sheet, prior to that, I haven't seen since the day I was in the storage room with the man.

Q. Do you know where the books are now?

A. I do not.

Q. Did American Brands go into receivership in 1949?

A. I don't know. I had nothing to do—it could be in 1949, it is a matter of record, but I had nothing to do with that. I want to explain one thing: I never remember any Bronx Home Products books.

[fol. 2831] Q. You never had those books?

A. No. I don't think there were any books there, outside of cancelled checks or bank statements.

Q. Did you see cancelled checks belonging to Bronx Home Products?

A. No. I never had any cancelled checks. I think the only thing I ever saw was a transcript of the bank statement.

Q. Where did you see that transcript—did you have it in your possession?

A. No. I am trying to think of it—at this particular moment I don't remember where I saw that transcript of the bank statement.

Q. Who had charge of the store-room at 19 Rector Street, was there any individual that you recall having charge of that store-room?

A. I don't know what you mean by "charge."

Q. Well, was there a president of any of these companies that——

A. Well, it is my opinion that Mr. Giglio would be in charge of the store-room.

Q. You say it is your opinion. Do you know whether he had possession of the books?

A. They were in the store-room. I don't mean to hedge, but I can tell you that is the last time I saw the books—in the store-room.

Q. And you did not take any books out of that store-room?

A. No, sir.

Q. And you do not have any of these books in your possession at this time?

A. No, sir. I want to correct something—the same as Bronx Home Products, Loraine Food Company I never saw, and I don't think there existed any books and records.

Q. And the same is true for Van Dyke?

[fol. 2832] A. I didn't do any work on Van Dyke Corporation the same as I did with American Brands. That was handled by another partner, another stockholder of Mr. Giglio, in the Van Dyke.

Q. Do you know who handled the books of Van Dyke?

A. Van Dyke; that is the man's name.

Q. He personally handled the books?

A. Well, he may have had somebody out in New Jersey handling it.

Q. Are there any of these other companies that you didn't work on?

A. Did I mention Loraine Food?

Q. Yes, you did.

A. For a great part of the time I didn't do the same kind of work on Eatsum Food Products Company as I did on the corporations. I did verifications over there, but I actually didn't do the bookkeeping work on Eatsum Food Products except towards the very end.

Q. Anything else, Mr. Roth?

A. No, not at this particular moment.

A Juror: You were practicing as a certified public accountant?

The Witness: Not certified.

A Juror: As a public accountant?

The Witness: Yes, sir.

A Juror: I didn't get the development of what year it

was, the last time that you saw these books. You said the last time you saw them was in the fall, but when was that?

The Witness: Well, I remarked that——

Mr. Leone, if you have the date they filed for receivership in New Jersey, I could place it that way.

Mr. Leone: To the jury, I might state that my recollection at the moment was that it was 1949, and that is why I [fol. 2833] asked Mr. Roth if that refreshes his recollection, but it is a matter of record as to the time when American Brands went into receivership in New Jersey, and if he fixes it as of that date that can be established at a later time. It is not materially important at this time.

(Witness excused.)

[fol. 2834] TESTIMONY OF FRANK LIVORSI BEFORE GRAND JURY, JULY 15, 1952

FRANK LIVORSI, called as a witness, having first been duly sworn by the Foreman, testified as follows:

By Mr. Leone:

Q. Mr. Livorsi, what is your full name?

A. Frank Livorsi.

Q. Where do you reside, Mr. Livorsi?

A. 15 Fulton Avenue, Atlantic Beach, Long Island.

Q. Mr. Livorsi, I believe that on July 8, 1952, a subpoena was served upon you through a Mr. J. Gerard Cregan, is that correct?

A. You mean the subpoena?

Q. Yes.

A. Yes.

Q. That was served upon you through Mr. Cregan?

A. Oh, yes.

Q. That subpoena, I believe, asked you to produce certain books and records?

A. Yes. I just was reading it; that's right.

Q. Now, have you produced those books and records?

A. I have no books or records.

Q. Have you read the subpoena?

A. Yes; I just read it.

Q. And do you have it with you?

A. Yes.

Q. Would you look at it, please? You see there are twelve companies?

A. Yes.

Q. You say you don't have any books and records of those companies at this time?

A. No, I don't.

Q. Have you ever had the books of American Brands Corporation in your possession?

A. No, I never had any in my possession, and never even seen them.

[fol. 2835] Q. Did you ever have the books and records of the American Agar Corporation?

A. No, none of them.

Q. You never had the possession of any of these books and records? A. No.

Q. Have you ever seen any of them?

A. Never seen them.

Q. Do you know where the books and records of any of these corporations or companies are?

A. No, I never seen them and never handled them, and wouldn't know.

Q. Did you ever discuss the books and records of these companies with anyone?

A. I was never in the office. I was always in the plant, and was never in the office.

Q. Were you an officer of any of these corporations?

A. Yes—Tavern Fruit Juice.

Q. Would you tell us which ones you were an officer of and what officer you were?

A. Tavern Fruit Juice is the only company I was an officer, and I worked in the plant; that is the only plant.

Q. You say you were not an officer of any of the other corporations?

A. The only one I say I was an officer was because I signed checks for the Tavern Fruit Juice Company.

Q. Were you an officer of any of the other corporations?

A. I might have been an officer, I don't know, but I know I can tell you definite on Tavern Fruit Juice.

Q. Were you an officer of American Brands Corporation?

A. Maybe I was. I don't know. I might have been.

Q. You say maybe; do you know whether or not you were an officer——

A. I don't know. I told you the company I know of, Tavern Fruit Juice Company; I know I was a partner there. That is the only company I know I was a partner, [fol. 2836] but the other companies I don't know whether I had anything to do with or not.

Q. Did you ever attend a board of directors' meeting of any of these companies?

A. No.

Q. Did you ever sign any of the papers of any of these companies?

A. I don't remember signing any papers for any company.

Q. Were you ever notified that you were elected an officer of any of these companies?

A. Not that I remember.

Q. Did you ever sign any of the checks of any of these companies besides the Tavern Fruit Juice?

A. No. The only ones I ever remember is Tavern Fruit; that is the only checks I remember signing.

Q. Were you ever authorized to sign any of the checks of any of the other companies?

A. No.

Q. Now, do you know whether or not you were an officer of any of these companies?

A. No, I don't, I really don't.

Q. Is there any way that you can find out?

A. Yes, I can find out right away. I want to see Mr. Giglio, and he would know if I was an officer or a partner; he will know.

Q. You never saw any of the books on any of these companies?

A. No, I didn't.

Q. And you don't know where they are now?

A. No, I don't.

Q. Thank you.

(Witness excused.)

[fol. 2837] TESTIMONY OF HOWARD M. LAWN BEFORE GRAND JURY, JULY 15, 1952

HOWARD M. LAWN, called as a witness, having first been duly sworn by the Foreman, testified as follows:

By Mr. Leone:

Q. What is your full name, sir?

A. Howard M. Lawn.

Q. Mr. Lawn, what is your address?

A. 274 Lenox Avenue, West End, New Jersey.

Q. And your occupation, Mr. Lawn?

A. I am in business, and I am an attorney.

Q. Mr. Lawn, I believe that a subpoena was served upon you through Mr. Cregan, your attorney, is that correct?

A. Yes, it is, Mr. Leone.

Q. You have that subpoena before you, I believe?

A. I do, sir.

Q. Have you compiled with the request in the subpoena?

A. I have.

Q. And have you produced the books and records requested there?

A. I do not have the books and records in my possession, save four individual items that relate to Tavern Fruit Juice.

Q. You say you have four items relating to Tavern Fruit Juice?

A. That's right, sir. They consist of three checks made out to me by Tavern Fruit Juice, and dated respectively November 7, 1945, February 8, 1946, March 11, 1946, and a check-stub that relates to the first check. Those are the only matters itemized in this subpoena that I have in my possession.

Q. Does that relate to Tavern Fruit Juice Company or to Tavern Fruit Juice Company, Inc.?

[fol. 2838] A. This relates to Tavern Fruit Juice Company, a partnership, as I understand it.

Q. Now, you say that excluding Item 9 you have none of the items requested as to the companies enumerated 1 through 8, or 10 through 12, is that correct?

A. That's right, sir.

Q. Have you ever had those in your possession?

A. No, I have not, sir.

Q. Have you finished with your answer?

A. Yes, I have finished.

Q. Do you know who has possession of those items?

A. No, I do not; not of my own knowledge.

Q. Did you at any time have those books in your possession?

A. I think we ought to begin to categorize them.

Q. Very well. Then suppose you do that, Mr. Lawn.

A. I never had the books of any of these companies in my possession as such. I have understood that the books 1, 2, 3——

Q. By those numbers you are referring to the companies on the subpoena?

A. Yes—4 and 5 were subpoenaed in a State bankruptcy in New Jersey, some time at the end of 1947 or early 1948, and that subsequent to that there was in the possession, this morning of Mr. Giglio a receipt by a Government agent that these books were taken by Mr. Paul Mahon.

Q. Now, referring to American Brands Corporation, American Agar Corporation, American Brands Wholesale Corporation, American Sweets Corporation, and American Trucking and Forwarding Corporation, is that right——

A. That's right.

Q. —were all the books and records as requested in the [fol. 2839] subpoena—in other words, the general ledger, the accounts receivable, the accounts payable, the journals, the cancelled checks, the check-stubs, the bank statements, and all invoices referring to accounts payable or cancelled transactions—with reference to the first five companies, were all those books turned over to the State receivership in New Jersey?

A. I have no knowledge of my own, Mr. Leone, and the receipts would speak for themselves, as to what the Government agents have. Certainly, I never had them in my possession. I had no authority or position that would enable me to have them in my possession.

Q. Were you an officer of the American Brands Corporation?

A. That is a moot question, and I don't intend to quibble, ladies and gentlemen. I was an accommodation officer, and I never served or functioned as an officer of the American Brands Corporation.

Q. You say you had no authority as president, Mr. Lawn?

A. I was never president. Mr. Giglio was president of the company.

Q. Did you ever represent yourself to be president of American Brands Corporation?

A. No, I never represented myself to be president of American Brands Corporation, sir.

Q. Did you ever represent yourself to be president of any of the corporations listed on the subpoena, as items 2, 3, 4 or 5? A. No.

Q. Did you ever sign any papers as president of American Brands Corporation?

A. I have no recollection, and I don't see how I could have.

Q. Is it, then, your answer that you did not sign any papers as president?

A. My answer, sir, is that I don't see how I possibly [fol. 2840] could have. You are asking me questions, and I am perfectly willing to comply with any questions that you ask me. You are asking me questions about matters that are years old, and I certainly never represented myself as president.

Q. And you never represented yourself as president?

A. No, I never represented myself as president of a company of which I was never president.

Q. Did you ever authorize anybody to represent you as president?

A. No.

Q. As to items 6 through 12, did you ever have those books in your possession?

A. No.

Q. Do you know where the books are now?

A. Not of my own knowledge.

Q. By that you mean, you don't know?

A. That's right, sir.

Q. Have you ever seen those books?

A. I don't think so.

Q. As to items 1 through 5 of the corporations referred to therein, did you ever see those books?

A. I saw some of those books, when the corporations were incorporated. I saw those books that were entitled the corporate stock books and the minute books and the stock transfer books, but I never saw any of the books of commerce. I never had anything to do with them, and never saw them.

Q. Did you ever authorize anyone to remove those books?

A. Of course not.

Q. Are those corporations still in existence today?

A. They have been inactive since the discharge in bankruptcy some time in late '48 or early '49. Excuse me, it isn't technically a bankruptcy, it is a State receivership. [fol. 2841] Q. And by that you are referring to items 1 through 5—were those the only companies involved in the receivership?

A. My recollection is that it is. Perhaps Mr. Giglio's recollection is more accurate. My recollection is that the receivership also included the Loraine Food entity—I don't know which it is; you have two here, and I wasn't even alert to the fact that there were two divisions of the Loraine.

Q. You do not have these books at this time?

A. No, I do not, Mr. Leone.

Q. And you never had them in your possession?

A. Only in the way that I answered, Mr. Leone.

Q. At the time of the incorporation?

A. And only some of them, the ones I enumerated.

Q. And aside from that you never authorized anyone to remove those books?

A. Not I, no. I never had any authority to authorize anyone to remove them.

Q. Were you an officer of the American Brands Corporation?

A. I think I answered that.

Q. Would you mind answering that again?

A. I said I was an accommodation officer of American Brands, and I never had any authority or was authorized so to act.

Q. And by an "accommodation officer" you mean what?

A. Somewhere along the line I was given the title, but

there was never an official election of me as an officer of American Brands.

Q. And do you recall what the title was?

A. I think it was vice-president and chairman of the board, but my recollection may be faulty. However, the records would preserve it, actually.

Q. And that title, although it was given to you, was never used by you, is that correct, sir?

[fol. 2842] A. I don't know whether it was used by me or not. I was probably designated as such. My point is that while I don't mean to quibble about it still I want to be accurate about it; it is that I was never formally elected to that position.

Q. Did you ever represent yourself as such officer?

A. That I don't know.

Q. Did you ever sign any pa rs as president of that corporation?

A. I don't see how I possibly could have, because I was never designated as president.

Q. And as vice-president did you ever sign such papers?

A. I don't know; I may have.

Q. So that you are not able to comply now with the terms of the subpoena, except for the four items that you have produced?

A. That's right; and I would like to ask you, in the event those four items interest you, to permit me to retain them and to furnish you with a photostatic copy.

Mr. Leone: I think that is all right, if it is all right with Mr. McKinley.

The Foreman: It is all right.

(Four papers marked, respectively, Grand Jury Exhibits 1 to 4, this date.)

Q. Mr. Lawn, you have delivered to this Grand Jury items which are marked, in the order in which I am giving them to you, Grand Jury Exhibits 1 through 4, is that correct?

A. That's right, sir.

Q. And this will be photostated by you and delivered to me, is that correct?

A. Yes, I will be glad to do it.

[fol. 2843] The Foreman: Unless you would wish to photostat them and return them to him.

Mr. Leone: That can be worked out after we are finished here.

Q. Mr. Lawn, were you an officer of Tavern Fruit Juice Company?

A. Tavern Fruit Juice Company?

Q. Yes.

A. Tavern Fruit Juice, as I understand it, Mr. Leone, was a partnership owned by two people. As I understand it, and again I am giving you hearsay information, Mr. Leone, namely, by Mr. Giglio and Mr. Livorsi,——

Q. Do you care to tell this Grand Jury how you came into possession of these papers?

A. These papers?

Q. Yes, sir.

A. There is no mystery about anything, Mr. Leone. I got these papers from Mr. Giglio, who is outside awaiting his entrance here.

Q. How long have you had them, sir?

A. I have had them approximately ten weeks.

Q. Did you obtain them from Mr. Giglio, at your request?

A. Yes, I did.

Q. That is all, Mr. Lawn. Thank you.

A. Thank you.

(Witness excused.)

HOWARD M. LAWN, recalled.

By Mr. Leone:

Q. Mr. Lawn, I have been asked a question which I am not able to answer—and which, in view of the subpoena which was served upon you, I don't know if you need an-

[fol. 2844] swer it—but the question is whether, as an accommodation officer, you received a salary from any of these corporations.

A. All moneys that I received from these corporations are a matter of record.

Q. Well, then, you did?

A. I have no independent recollection, at this stage, as to what moneys I necessarily received, without checking my records. However——

Q. But you did receive moneys?

A. All moneys I received are a matter of record, sir.

Mr. Leone: Does that answer your question?

Juror: Yes.

(Witness excused.)

[fol. 2845] TESTIMONY OF WILLIAM J. GIGLIO BEFORE GRAND JURY, JULY 15, 1952.

WILLIAM J. GIGLIO, called as a witness, having first been duly sworn by the Foreman, testified as follows:

By Mr. Leone:

Q. Your full name, sir?

A. William J. Giglio.

Q. And your address, Mr. Giglio?

A. 43 Comanche Drive, Port-au-Peck, New Jersey.

Q. Now, Mr. Giglio, you are here in response to a subpoena duces tecum which was served upon Mr. Cregan on your behalf; is that correct?

A. Yes, sir, that is correct.

Q. And I believe that the subpoena requested that you produce certain records.

A. Yes, it did, sir.

Q. Now, I believe that Mr. Cregan also advised me, downstairs—in fact, I know he did—that certain records were turned over by you. And I have a receipt which he gave me, which belongs to you; we'll go into that in just a moment.

A. Yes.

Q. First of all, have you produced any of the books and records as set forth in the body of the subpoena, of American Brands Corporation?

A. Are you asking at this moment, sir, or——

Q. Have you now?

A. Oh, have I now, with me?

Q. Yes.

A. May I answer it this way: I have not brought any of these things that you have asked for here, only because I have not had sufficient time to look for them and gather them together. I will be very happy to bring them in if I may be granted a little bit of time in which to gather this material.

[fol. 2846] Q. Well——

A. Now, that goes for most of those, Mr. Leone, except some in which—well, only one here and in which I couldn't conceivably have any of the books and records because I would be in no position to have them, not having owned the company and not having had more than an arrangement with that company, and that's the Bronx Home Products Company. On these other books and records, I think, if you will check the summons and the receipt given to the attorney or attorney for the receiver in receivership of these companies and corporations, you will find that practically all of these companies and corporations turned over the books and records to the Internal Revenue Department on some date in 1949. I don't know the exact date, but it's there in front of you.

Q. In other words, you are now referring to this photostatic copy of a Treasury Department, Internal Revenue Service, dated June 20, 1949, receipt, signed by Paul G. Mahon, Special Agent? You now have reference to that; is that correct?

A. That is right, sir.

Q. Were all books and records turned over, first of all, to the receiver in New Jersey, of American Brands Corporation?

A. Yes. In 1947, I believe it was, December of '47, we were thrown into an involuntary receivership, a state receivership in the state of New Jersey. I don't quite recall the names of the receiver and the accountant, and so forth. They came to our office with a subpoena and took with them all of the books and records of these companies and corporations. We later delivered to the accountant's office, both

on Madison Avenue, in one of the life insurance buildings, and in an office building in Jersey City—and I don't re- [fol. 2847] member exactly where it was; the attorney that we used for that receivership would have that information——

Q. Who was the attorney you used?

A. Mr. Walter Kohn.

Q. His address?

A. On Fifth Avenue. I believe he is on 29th and Fifth. We turned over to them a considerable amount of material; checks, work sheets, so forth and so on.

Q. Did you turn over all the books and records of the American Brands Corporation?

A. All books and records, yes, if you mean by "books and records" the general ledgers, accounts receivable, payable books, journals, so forth and so on, that was the type of material that they took.

Q. Did they take the cancelled checks?

A. They had them; because, if you would check the receivership proceedings, you would find that we were questioned—I, myself, had many a hearing at this receivership in 1948 in a building in Jersey City, I think, number one—oh, I can't remember quite—but down on the water where they have these things, where the receivers sit.

Q. In other words, now you state that you had turned over the cancelled checks to them?

A. They would have a lot of them. I don't think they had all of them. And some of them were returned to us.

Q. Do you now have them in your possession?

A. I think that I could find whatever the Internal Revenue Department doesn't have, if I were given an opportunity to seek in many places where they might be. This——

Q. How much time would you wish, Mr. Giglio?

A. I would like 30 days, Mr. Leone. You see, this has been—since 1947, when we went out of business, these rec- [fol. 2848] ords haven't had any great meaning to us until just now, even though we have been under constant investigation by the Internal Revenue for a period of some six years. Incidentally——

Q. Have you recently produced any of the records?

A. Yes.

Q. You have. Therefore, would it be a fair assumption now that you are familiar with the whereabouts of these records?

A. I would say that it wouldn't be a fair assumption, Mr. Leone, because I don't know where they all might be. They might be in many places. But I can promise you that I will bring you in everything that I can find, because I don't feel that there is anything that I would like to hide.

Q. And we are now still speaking of American Brands Corporation?

A. I'm assuming that you are talking about all of these corporations.

Q. I'm first speaking about American Brands Corporation.

A. I'm sorry.

Q. Since the general ledger, general journal, the cash purchase book of American Brands Corporation, of American Brands Wholesale, American Sweets and American Trucking have already been delivered to Internal Revenue, that still leaves the cancelled checks, the check stubs, the bank statements, the invoices to be accounted for.

A. It would leave what, Mr. Leone?

Q. The cancelled checks, the bank statements, the check stubs——

A. (Writing) Checks, bank statements——

Q. Check stubs——

A. (Witness writes.)

Q. —and any and all invoices.

A. By "invoices" you mean material invoiced out by these companies?

Q. Invoiced out. And also——

A. How about purchase invoices?

[fol. 2849] Q. Purchase invoices.

A. (Witness writes.)

Q. Now, with regard to the Item No. 6, the Van Dyke Industrial Corporation, do you have any of the books and records of that corporation?

A. I don't think I could answer that intelligently or honestly. I don't know, I don't really know.

Q. How much time do you need to find out whether you have them?

A. Well, as I said before, I can search in every place where any books and records might be, in the next 30 days.

Q. Well, Mr. Giglio, first of all, have you ever had any of these books and records in your possession; now, referring to Item 6?

A. The Van Dyke Industrial Corporation was a corporation in which I owned 50 per cent of the stock. The other 50 per cent owner was a Professor John C. Van Dyke, a chemistry professor who worked for me in our research and development project on the manufacture of sugar from the new raw materials—I presume you know about that—from the waste raw materials, rather. We had a—Van Dyke Industrial Corporation was a building in which we had our laboratories housed in Bernardsville, New Jersey. Now, it may very well be that Dr. Van Dyke would have these records.

Q. Well, do you have any of those records?

A. Not to my knowledge. And I was going to say I would call Dr. Van Dyke, go and visit with him and see whether or not he has them, and if he has them I would bring them in.

Q. Do you have any of the books and records of the Lorraine Food Corporation?

A. Not that I know of.

Q. Do you have any of the books and records of the Lorraine Food Company?

A. Again, not that I know of.

[fol. 2850] Q. Have you ever had any of the books and records of those two companies?

A. Well, I think that the Government has the books and records of those companies. On one of these summonses signed by Mr. Mahon on the 20th day of June they ask here for the books and records of Lorraine Food Company as well as the American Brands and subsidiary companies.

Q. Well, did you produce——

A. In this—no. This summons was not given to us, Mr. Leone. This summons was served on Mr. Nadel—I recall his name now because I see it here—who was the accountant for the receiver in receivership of these corporations.

Q. Now, on top of the summons you have there a receipt, do you not, you also have a receipt there?

A. Oh, yes, at the top.

Q. And I do not believe——

A. No; it says nothing at all here about Lorraine. But it's conceivable, Mr. Leone, that Lorraine papers and many other things could be in here. You see, this says: "Folder of American Trucking and Forwarding"; "Folder." That might sound like there might just be a couple of pieces of paper in a folder. If you would—if you were to question Mr. Nadel, as I did at one time to ask him what actually he gave to the Agents, you would find that that simple description, "Folder," would include all of the books. Mr. Nadel put it in this manner to me; he said, "From these books and records that were inclosed in these folders, of all of these companies and corporations, anyone could rebuild the entire business affairs of your entire business life," he said, "so their claim that they had very little is unfounded." I think he would be willing to say that to you. [fol. 2851] I haven't seen the man probably in three or four years; but he is an honest man.

Q. Mr. Giglio, do you now have the books of Lorraine Food Corporation?

A. Not to my knowledge, Mr. Leone.

Q. When was the last time you saw them?

A. The last time, I believe, I saw Lorraine Food books would have been in 1947; and during '48, during that receivership, that's the last time.

Q. Do you now have the books and records of Tavern Fruit Juice Company?

A. The same would hold true of that.

Q. I don't understand your answer.

A. The same would hold true; that I haven't seen these books and records in a long time, Mr. Leone.

Q. Now, how long a time would you say you have not seen the books and records? By that I'm——

A. Are you talking about company or company incorporated?

Q. Company.

A. I've seen some of them recently, of the company. That was a partnership in which I owned the—I and another man owned this company.

Q. Have you produced those books and records here this morning?

A. No.

Q. Do you intend to produce those books and records?

A. I certainly do.

Q. Do you know where the books and records are?

A. Where a portion of them are.

Q. What portion is that, sir?

A. I found some checks and some check stubs. They were the only things I was able to find some time back.

Q. Therefore, it is your intention to produce those also?

A. It certainly is.

[fol. 2852] Q. And how soon do you intend to produce them?

A. Mr. Leone, the answer to that question, on every one of these companies and corporations—if you will grant me 30 days, I will produce everything that I can humanly possibly get my hands on. I would like to make records of what I turn over. And between the finding and the making of records of what I'm turning over, I think within 30 days I could have all of it for you.

Q. Is it your statement that you are unable to produce them at this time? A. Yes.

Q. Why is that, sir?

A. I have not had sufficient time, Mr. Leone, to gather all of this stuff together.

Q. Do you have the books and records of Eatsum Food Products Company?

A. No.

Q. Of Bronx Home Products?

A. Bronx Home Products I had nothing to do——

Q. You stated that.

A. The Eatsum Food Products Company, I think you will find that most of the books and records are in the hands of the Intelligence Unit, of New York. I may have some scraps and odds and ends of it. If I can find any of it, I will be glad to bring it in.

Q. What officer were you of American Brands Corporation, sir?

A. I was president.

Q. Your company went into receivership on what date, Mr. Giglio?

A. In December of '47.

Q. And at that time, or prior to December, '47, is it your answer that you turned all the books and records of the American Brands over to Mr. Nadel?

A. In December of '47 they came in and took the books and records of that company, Mr. Leone.

[fol. 2853] Q. And did you have the books and records of any other companies subsequent to that date?

A. I'm afraid I don't understand your question.

Q. Well, where were the books and records located when they were seized or when they were subpoenaed by the receiver in New Jersey?

A. Well, there were two places in which we maintained all of the books, records, invoices, correspondence, so forth and so on, of all of these companies and corporations that we have been talking about, and that was in one of two places at that time; either in the office, those current things that we needed for everyday affairs, and in a storeroom in that building; we had rented a storeroom from the building, somewhere down in the basement I believe it was of that building that we were in.

Q. And how long did you remain in that building? I believe you are referring now to 19 Rector Street; is that correct?

A. Yes. I'm sorry; I didn't say that.

Q. How long did you remain in that building?

A. You mean when did we leave there?

Q. Yes.

A. Oh, I think in 1948.

Q. Do you remember when in '48?

A. No, I'm afraid I couldn't give you the exact date.

Q. Was it the latter part of the year or the early part of the year or the middle part of the year?

A. If I may make a guess, I would guess it would be about the middle of the year.

Q. That's your best recollection?

A. My best recollection is that it would be about the middle of the year.

Q. And at that time did you have possession of any of the books and records of any of the companies listed as Items 1 through 11?

A. Well, when you say "the books and records" I think [fol. 2854] that's—I think that covers a lot of territory.

Q. Well, by that, when I'm using the term "books and records," I mean the items set forth in the body of the subpoena; the general ledger, the accounts receivable.

A. No, that type of thing we didn't have; the receiver had. The things that we would have had would have been correspondence, invoices, purchase—those invoices invoiced to us as well as those invoices that we invoiced out to people that we were selling to. Now, that's the type of material that we would have had, that the receiver didn't take because that would have been quite a bulky bit of material that had no real significance because the books and records reflect exactly what the invoices all reflect.

Q. And there did come a time when American Brands left 19 Rector Street?

A. That is right.

Q. And when that time came were the books removed from 19 Rector Street?

A. The books were not at 19 Rector Street when we left.

Q. Where were they?

A. The books and records of that company were in the hands of the accountant for the receiver.

Q. Were any books and records at 19 Rector Street?

A. To my knowledge, there were no books. There was correspondence, invoices, so forth and so on.

Q. Cancelled checks?

A. Yes there might be cancelled checks and stuff of that sort.

Q. Check stubs?

A. Yes.

Q. Accounts receivable books?

A. No. I would imagine accounts receivable books—I'm afraid I'm not an accountant, Mr. Leone, but I think accounts receivable books and payable books would have been with the receiver.

[fol. 2855] Q. And, of course, when you say they would have been with the receiver you are only referring to Items 1 through 5?

A. No. I'm thinking in terms of all of them. To the best of my recollection, the receiver took every company's books and records.

Q. Is it your statement, therefore, that he did take all the companies' books and records?

A. That is my opinion. I couldn't say that for certain, but that's what I have always thought.

Q. Well, did you ever give them—did you ever give the books and records to the receiver?

A. They came in there and took them. We had no choice, Mr. Leone.

Q. And you never authorized anyone to give them to them?

A. The only thing I did was tell everybody who had any hand in the keeping of books and records to turn over to the receivership under an order, under a legal order, to give them everything they wanted. I had no intention of violating an order.

Q. And what they didn't take was left behind; is that correct?

A. Anything they didn't take was left behind.

Q. And was that retained in the vault?

A. Yes, that would have been stuff that was in that room.

Q. Now, there came a time when whatever was left in the vault was removed; is that correct?

A. That is correct.

Q. And when was that?

A. I wouldn't remember.

Q. Well, was it prior or subsequent to the time that you left 19 Rector Street?

A. I couldn't honestly say.

Q. Did you authorize their removal?

A. Yes.

Q. And where were they removed to?

A. Well, we brought them to different places where I had place to store them.

[fol. 2856] Q. And where were they stored?

A. In many places, Mr. Leone, that I just can't remember all of them.

Q. Well, will you now tell this grand jury to the best of your recollection where they were stored?

A. Mr. Leone, some of the books and records, papers, and so forth, will be required by us, by me, to defend ourselves in an information filed against us in 1950, some time I presume in the near future.

Q. Mr. Giglio, you are now saying that the books and

records of American Brands Corporation, American Agar Corporation, American Brands Wholesale Corporation, American Sweets Corporation, American Trucking & Forwarding Corporation, will be required by you to defend yourself; is that what you are saying?

A. Well, Mr. Leone, you know that all of these companies were liquidated and the receiver issued an order giving us back these papers; and I understand that these papers were personal papers, that these are no longer corporations doing business, they went out of business in '47 and were liquidated in receivership.

Q. Were the corporations liquidated?

A. Yes.

Q. And they are now inactive?

A. Oh, they have been inactive since 1947, since June or July.

Q. And you no longer retain any stock in these corporations?

A. Well, there is no corporation. Those corporations went out of business some six years ago.

Q. And after they went out of business by whom were they liquidated?

A. I wouldn't remember.

Q. But they were liquidated?

A. I believe so. We were liquidated in a receivership. The companies went out of business, went bankrupt. Now, I'm not saying, Mr. Leone, that I have any reason other [fol. 2857] than that—whatever I bring you, and I intend to bring you every scrap of paper I can find because I have nothing to fear—but, in spite of the fact that I have had nothing to fear, I found myself with an information filed against me in 1950 for what we think was a charge that should never have been brought against me. Now, I need some of these records to defend that charge if and when it is ever brought into a courtroom.

Q. What records do you have that you need?

A. I don't say that I will have to keep the records. The records I intend turning over to you. But I would like to make photostats of those things that my accountants and attorneys think they will need to defend me in this——

Q. And those records were stored where, after they were removed from 19 Rector Street?

A. Well, they have been stored in many places, Mr. Leone. I've said that I'll bring them in, I've sworn to you that I'll bring them in here to you. I would like the privilege of photostating some of them—not all of them because they are rather voluminous—the rest I will bring in.

Q. Mr. Giglio, will you answer the question? The records after they were removed from 19 Rector Street were stored where?

A. Do I have the right to refuse to answer that question on constitutional grounds, Mr. Leone?

Q. In other words, you claim a privilege to answer the question?

A. I would like to claim my constitutional privilege on that question.

Q. Mr. Giglio, you are the president of American Brands Corporation?

A. That is right.

Q. You caused the records to be removed from 19 Rector Street?

A. Did I cause them to be removed?

[fol. 2858] Q. In other words, you authorized the records to be removed from 19 Rector Street?

A. The way you ask that question—you see, I'm not a lawyer.

Q. Well, do you understand the question?

A. Well, I don't know if I understand it completely.

Q. In that case, I'll repeat it for you.

A. It sounds like it might have a hidden meaning. May I claim constitutional privileges on that question too, Mr. Leone?

Q. Well, supposing first you understand the question and then perhaps you will be able to claim your privilege.

A. I think I understand it. But it seems to me that the question was asked for a particular reason; and maybe because I don't know the reason you might ask the question, and I would like to claim constitutional privileges.

Q. Did you ever store—withdraw that. Where were the records of American Brands Corporation stored subsequent to the receiver obtaining part of them?

A. 19 Rector Street.

Q. And from 19 Rector Street a part of the records of American Brands Corporation were obtained by the receiver; is that correct?

A. Yes, I would say all of the books and all of the important parts.

Q. Well, were any papers retained by American Brands Corporation at 19 Rector Street?

A. Yes.

Q. And they were stored in the vault at 19 Rector Street?

A. True; a portion of them, I guess there were, and some of them were in the office.

Q. And there came a time when they were removed from 19 Rector Street; is that correct?

A. True.

Q. And after they were removed from 19 Rector Street they were stored elsewhere; is that correct, Mr. Giglio? [fol. 2859] A. They were stored in many places after that, to the best of my recollection.

Q. And they were stored in various places under your orders; is that correct?

A. I would like to claim constitutional privileges on that question.

Q. Do you now know where the books and records are stored, Mr. Giglio?

A. May I claim constitutional privileges to that question too?

Q. You do claim a constitutional privilege as to that question?

A. Maybe I better go outside and talk to my attorney. I don't have enough legal knowledge.

Q. Do you wish to discuss the matter with your attorney?

A. May I, please?

Mr. Leone: May he be excused?

The Foreman: Yes.

The Witness: May I?

Q. You are excused.

(The witness was excused, and then recalled.)

Q. (Mr. Leone, cont'g) Now, Mr. Giglio, do you know where the books and records of American Brands Corporation are stored?

A. The books and records of American Brands Corporation, Mr. Leone, are in the hands of the United States Internal Revenue Department.

Q. Those that were not turned over to the United States Internal Revenue Department, do you know where they are stored, sir?

A. Upon advice of counsel, I would like to claim constitutional privileges, Mr. Leone.

[fol. 2860] Q. When was the last time you saw the books and records of American Brands Corporation which were not turned over to the Internal Revenue Department?

A. How shall I say this constitutional privileges sentence so that I can do it properly?

Q. You claim your constitutional privilege on what ground, Mr. Giglio?

A. Whatever the constitutional grounds are that you claim constitutional privileges on.

Q. Do you claim on the ground of self-incrimination?

A. Yes, I think that's it. May I ask a question, please, Mr. Leone?

Q. You may.

A. A little earlier I said that I would be perfectly willing to bring in anything that I can gather and find on any of these companies or corporations. I am not sparring with you, nor am I seeking any advantage. I am truthfully sitting here and saying that if you will give me a reasonable period of time I will bring in everything, to the best of my ability, that I can find.

By Mr. Leone (Cont.):

Q. Where will you look for the books and records of the American Brands Corporation, Mr. Giglio?

A. I would like to claim constitutional privilege on that.

Q. On the grounds of self-incrimination, is that correct?

A. On whatever the grounds are that you can claim privilege on.

Q. Do you want to discuss with your attorney as to what grounds you are claiming privilege on?

A. I didn't know there was more than one reason.

Q. If you would like to confer with him again on that,

[fol. 2861] you may be excused, as to what grounds you are claiming privilege on.

(Witness excused, and is recalled.)

A. On the grounds that it might tend to incriminate or degrade me.

Q. Mr. Giglio, do you know where the records of American Agar Corporation, that were not turned over to either the Receiver and in turn to the Bureau of Internal Revenue, are now?

A. Couldn't I use that same grounds, Mr. Leone, on all of these companies and corporations that you have listed here?

Q. If you wish to claim a privilege, will you do so as to each question?

A. All right.

Q. Do you know where the records of American Agar Corporation, that were not turned over to the Receiver and in turn to the Bureau of Internal Revenue, are now stored?

A. Shall I repeat the whole sentence? I want to be certain that I do it properly. I claim constitutional privileges on the grounds that it might incriminate or degrade me.

Q. And is the same true with regard to the books and records of American Brands Wholesale Corporation, of American Sweets Corporation, of American Trucking and Forwarding Corporation, and of Tavern Fruit Juice Company, Inc.?

A. I claim constitutional privileges on the grounds that it might tend to incriminate or degrade me.

Q. Therefore you do not know where those records are now stored, is that correct?

A. I don't think I said that.

Q. Do you know now where the records of the corpora-
[fol. 2862] tions previously enumerated are now stored?

A. I claim constitutional immunity on the grounds that it might tend to incriminate or degrade me.

Q. When was the last time that you saw the books and records of the American Brands Corporatior American Agar Corporation, American Brands Wholesale Corpora-

tion, American Sweets Corporation, American Trucking and Forwarding Corporation, and Tavern Fruit Juice Company, Inc., that were not turned over either to the Receiver or the Bureau of Internal Revenue?

A. I claim constitutional privileges on the grounds that it might tend to incriminate or degrade me.

Q. Did you at any time authorize any of these books and records to be removed from 19 Rector Street?

A. I claim constitutional privileges on the grounds that it might tend to incriminate or degrade me.

Q. Will you step outside, please, Mr. Giglio.

A. Yes, sir.

(Witness excused and recalled.)

Q. Mr. Giglio, in view of your claim of privilege, and the fact that this Grand Jury does not feel that your claim is in good faith, it is their desire to appear before the Presiding Judge in the Criminal Part at this time.

You are therefore asked and directed to accompany this Grand Jury to Room 318 of the building, in the company of the Grand Jury and the Marshal which is attending them.

A. Yes, sir.

(Mr. Leone, the Grand Jury, the Witness, and the Reporter adjourned to Court Room 318, Judge T. Hoyt Davis presiding.)

[fol. 2863] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF WILLIAM GIGLIO, JULY 15, 1952

Before:

HON. T. HOYT DAVIS, District Judge.

New York, July 15, 1952.

Foreman of Grand Jury: We have some indictments to present first and then Mr. Leone has something.

The Court: All right. Mr. Marshal, clear everybody out of the courtroom now except, of course, the members of the Grand Jury and the Assistant United States Attorney in charge of the Grand Jury and, I believe, the court reporter.

(Courtroom cleared.)

The Court: Now, is the courtroom cleared? All of it?

Mr. Leone: Yes, sir.

May it please the Court, this is an application by the United States to request the Court to compel a witness appearing before the Grand Jury to answer certain questions which were put to him, and which the witness has refused to answer, or in the alternative, that the witness be punished for contempt of the Grand Jury, which is presently sitting and which is presently hearing the case of John Doe, et al. The witness's name is William J. Giglio.

May the record show that the witness is present in court and is seated at the second table.

[fol. 2864] The Court: Do you want to put him on the stand?

Mr. Leone: Your Honor, I would like to put the Grand Jury Stenographer on and have a record made of the questions which were propounded to the witness.

Miss Gold.

Ida F. Gold, called as a witness, having been duly sworn, testified as follows:

Direct examination.

By Mr. Leone:

Q. Miss Gold, what is your occupation?

A. Grand Jury reporter for the Southern District of New York.

Q. And you are so qualified?

A. Yes.

Q. You have been recording testimony before the Grand Jury, which is pres-ding this month?

A. I have been.

Q. And this morning you were present when the witness, William J. Giglio, was being interrogated?

A. Yes, sir.

Q. You have a record of the questions and answers given by that witness?

A. Of the part that I took.

Q. Will you now read to the Court. Will you identify the witness who was present before the Grand Jury?

A. He is sitting at the table (indicating Mr. Giglio).

Q. Will you now read——

The Court: Is he present in court here?

Mr. Leone: Yes, he is, your Honor.

The Court: He is, all right, seated at the second table; is that correct, Mr. Giglio?

Mr. Giglio: Yes.

[fol. 2865] Q. Will you now read to the Court questions which were propounded to the witness and the answers given to the questions?

A. Well, I don't have all of them. What part do you want?

Q. The part you do have.

The Court: Speak distinctly, please, so that I can hear you.

The Witness: Yes, your Honor.

A. (Reading) "Q. Where will you look for the books? . . ." Pardon me. I have part of an answer before that:

"(Continuing answer) I am not sparring with you nor am I seeking any advantage. I am truthfully sitting here and saying that if you will give me a reasonable period of time I will bring in everything, to the best of my ability, that I can find.

"Q. Where will you look for the books and records of the American Brands Corporation, Mr. Giglio?

"A. I would like to claim constitutional privilege on that.

"Q. On the grounds of self-incrimination? Is that correct?

"A. On whatever the grounds are that you can claim privilege on.

"Q. Do you want to discuss with your attorney as to what grounds you are claiming privilege on?

"A. I didn't know there was more than one reason.

"Q. If you would like to confer with him again on that, you may be excused, as to what grounds you are claiming privilege on."

The witness was excused and then re-entered.

[fol. 2866] "A. On the grounds that it might tend to incriminate or degrade me.

"Q. Mr. Giglio, do you know where the records are of American Agar Corporation, that were not turned over to either the receiver, and in turn to the Bureau of Internal Revenue, are now?

"A. Couldn't I use that same grounds, Mr. Leone, on all of these companies and corporations that you have listed here?

"Q. If you wish to claim a privilege, will you do so as to each question?

"A. All right.

"Q. Do you know where the records of American Agar Corporation, that were not turned over to the receiver, and in turn to the Bureau of Internal Revenue, are now stored?

"A. Shall I repeat the whole sentence? I want to be certain that I do it properly. I claim constitutional privileges on the grounds that it might incriminate or degrade me.

"Q. And is the same true with regard to the books and records of American Brands Wholesale Corporation, of American Sweets Corporation, of American Trucking & Forwarding Corporation and Tavern Fruit Juice Company, Inc.?

"A. I claim constitutional privileges on the grounds that it might tend to incriminate or degrade me.

"Q. Therefore, you do not know where those records are now stored; is that correct?

"A. I don't think I said that.

"Q. Do you know now where the records of the corporations, previously enumerated, are now stored?

"A. I claim constitutional immunity on the grounds that it might tend to incriminate or degrade me.

"Q. When was the last time that you saw the books and records of the American Brands Corporation, American Agar Corporation, American Brands Wholesale Corpora-[fol. 2867] tion, American Sweets Corporation, American Trucking & Forwarding Corporation and Tavern Fruit Juice Company, Inc., that were not turned over, either to the receiver or the Bureau of Internal Revenue?

"A. I claim constitutional privileges on the grounds that it may tend to incriminate or degrade me.

"Q. Did you at any time authorize any of these books or records to be removed from 19 Rector Street?

"A. I claim constitutional privileges on the grounds that it might tend to incriminate or degrade me.

"Mr. Leone: Will you step outside, please, Mr. Giglio.

"The Witness: Yes, sir."

And the witness was excused.

The Witness: Mr. Leone, do you want me to read the part when he was called in again?

Mr. Leone: Yes, sir.

A. (Continuing) He was then recalled, and Mr. Leone said:

"Mr. Giglio, in view of your claim of privilege and the fact that this Grand Jury does not feel that your claim is in good faith, it is their desire to appear before the presiding judge in the Criminal Part at this time. You are therefore asked and directed to accompany this Grand Jury to Room 318 of the building, in the company of the Grand Jury and the marshal which is attending them.

"The Witness: Yes, sir."

[fol. 2868] And we proceeded down here.

Mr. Leone: May it please the Court, this witness was subpoenaed, and it was established that he was the president of American Brands Corporation. A copy of the subpoena is here in court. Seven corporations and five companies are enumerated and listed upon the subpoena.

The Government renews its application, which it made earlier, that the witness be compelled to answer questions —be directed to answer the questions which he refused to

answer, or in the alternative that he be punished for contempt of the Grand Jury.

The Court: Well, is he being investigated, himself?

Mr. Leone: These various companies are being investigated, your Honor.

The Court: The defendant himself is not under investigation?

Mr. Leone: Well, it is a John Doe investigation, and the witness appeared in response to subpoena duces tecum.

The Court: I see.

Mr. Leone: The witness was asked to produce certain records of certain companies, and it has been established that he was either a partner in some of these companies, or that he was an officer of the corporation.

Now, the investigation is a John Doe proceeding, and it might very well be that in time he would be the subject of an investigation—I don't say that he is not—but at the [fol. 2869] present time these companies are under investigation, your Honor.

The Court: And these corporations.

All these questions are all as to the whereabouts of the books; is that correct?

Mr. Leone: That is correct, your Honor.

The Court: Where they are located.

Mr. Leone: That is correct.

The Court: I don't see any reason why he shouldn't answer the questions.

Mr. Witness, the Court instructs you——

Mr. Leone, you are talking about these questions that have been read.

Mr. Leone: That is correct.

The Court: With respect to the whereabouts of the books.

Mr. Leone: That is correct.

The Court: The Court instructs you to answer those questions to the Grand Jury.

Mr. Giglio: Your Honor, may I have the opportunity to speak for a couple of minutes, so that you may see some of the background of this situation?

The Court: Who is speaking?

Mr. Leone: That is the witness.

Will you rise, please.

Mr. Giglio: May I speak for a moment, your Honor?

Mr. Leone: Your Honor, I believe that the testimony is before the Grand Jury and it is a matter of record as to——

[fol. 2870] The Court: Yes, the questions that have been read to the Court here now, I see no reason why those questions should not be answered, and these are the questions that we are dealing with. So the Court instructs you to answer them.

Mr. Giglio: Your Honor, you conjectured as to whether or not I might be a defendant or whether I am under investigation. I want to inform your Honor that an information was filed against me in 1950, in the Southern District of New York, charging me with the wilful failure to pay the tax of these corporations in September of 1950. I was under investigation.

The Court: Well, that is beside the point here, because these questions are just simply asking where, if you know, where certain records are.

Mr. Giglio: Yes, your Honor, I have offered to bring them in; I have offered to bring the Grand Jury these records. If I were given a short bit of time in which to accumulate this material, I will be very happy to bring them in.

The Court: That will be a matter, of course, for the Grand Jury to determine, about giving you time.

Mr. Leone: Your Honor has directed the witness to answer the questions, and again the issue is to whether or not the witness should be required to answer the questions which he was asked.

The Court: That is the only question that is before me here now, is the answer to these particular questions, and I instruct the witness to answer them. Of course, I am going to permit him to go back before the Grand Jury and [fol. 2871] either follow these instructions or disobey them; and if the Grand Jury has further occasion to come before me about it, why, you may do so.

Mr. Leone: Yes, your Honor. Will your Honor therefore direct——

The Court: I direct that they be answered.

Mr. Leone: —that the witness return in the company of the marshal to Room 706 in this building?

The Court: Is that the Grand Jury room?

Mr. Leone: Yes.

The Court: Now, Mr. District Attorney, I am about to go to lunch.

Mr. Leone: I don't believe we will bother you any more, your Honor.

* * * * * * *

[fol. 2872] TESTIMONY OF WILLIAM J. GIGLIO BEFORE GRAND JURY, JULY 15, 1952

WILLIAM J. GIGLIO, recalled.

Mr. Leone: (To the previous stenographer) Miss Gold, might I suggest that you read the questions so that they will be phrased exactly as they were asked?

The Witness: Mr. Leone, may I please answer these questions? I know the questions that you are going to ask me again. May I answer them this time for you in my own way?

By Mr. Leone:

Q. You may. Will you?

A. May I also give you a little bit about the reasons as to why I would like—I would have rather not liked to have answered these questions?

Q. Well, supposing, Mr. Giglio, you just answer the questions. I believe the reasons are probably personal to yourself and they may——

A. Well, except that it's usually a grand jury's business to know a little bit about why a man is brought in here. I would just like to tell you about it.

Q. Well, Mr. Giglio, you are here in answer to a subpoena duces tecum. And I don't think we need to quarrel about it; you personally are here, and we are only concerned about answering the questions. If you will answer the questions concerning the books and records, I'm certain the grand jury will be very happy; and you will be excused and there will be no further proceeding. With that understanding, will you answer?

A. Well, may I just—because I don't know the usual procedure, may I just make one statement?

Q. You may, yes, with the Foreman's permission, if you wish.

[fol. 2873] The Foreman: Are you all agreeable?

Juror: Surely.

Q. (cont'g) Go ahead, sir.

A. I have been investigated for six years for other dealings and for income tax purposes. I have been investigated and persecuted, as will come out very shortly, I believe, by certain Agents and by certain other people.

Q. Does that include District Attorneys, Mr. Giglio?

A. No, no, sir, Mr. Leone, this is my first experience with you. While I can't say it's been a happy one, you certainly have shown no signs of persecution.

The Foreman: Can't we get on with this? It's twenty minutes over our time and we have things to do.

A. (cont'g) The reason I asked for some time to locate this material is because it could be in many places; and, in addition, some of this material will be required by me for my defense against a charge levied against me in 1950 and against charges that the United States Attorney's office is considering against me for the future. I am under investigation. It is not a "John Doe" investigation. I know full well that I have been under investigation for six years, because I have been hounded for six years by a couple of Internal Revenue Agents. I have never been asked for my side of the story. I have never had the opportunity to have a conference like any ordinary citizen might have, but I'm brought into a grand jury hearing and told that I'm in contempt if I don't try to defend myself. Perhaps I'm only [fol. 2874] fighting here for what every ordinary citizen should consider their rights.

Q. All right. Now——

A. All right; some of these books and papers are in the hands of my attorney in Chicago, Mr. Edward B. Hensley.

Q. Which?

A. I don't know. I don't know where all the stuff is, I honestly don't know. I've offered to go out, if you will permit me, and I will get all of this material together and

I will bring it in to you, because I have nothing to fear; but I would like to do it and I would like to record what I bring in to you.

Q. In which places are the books and records of these corporations which were not turned over to the Bureau of Internal Revenue or to the receiver in bankruptcy in the state of New Jersey? Where are they now located, Mr. Giglio?

A. There is a plant at which I'm employed in Jersey City; some of them might be there. There is a plant in New York.

Q. Where would they be in that plant?

A. I don't know. They might be in the office up there or in the storeroom, or something like that.

Q. When is the last time you saw those records?

A. Years ago.

Q. You have not seen them in years?

A. Some of the things I have not seen in years. They are in cartons, and so on.

Q. Did you not produce to the State of New Jersey, before a grand jury which was hearing——

A. Yes, I did.

Q. You did?

A. Yes, I did.

Q. And you obtained those records where?

A. I was able to locate some checks.

[fol. 2875] Q. Where did you locate those records?

A. I located those in a storeroom that I have at my home.

Q. And that storeroom is located where?

A. At my home.

Q. Where is that?

A. 43 Comanche Drive.

Q. Therefore, you have seen books and records of some of these corporations within the last 90 days, have you not, sir?

A. I believe I said that earlier, Mr. Leone. I said that I was able to find some scraps to help another man in this situation when they attempted to accuse him of a crime which he proved was no crime,——

Q. Where else are those——

A. —by the use of those books and records.

Q. Where else are the books and records located, Mr. Giglio?

A. Well, we had an office in Newark, on Frelinghuysen Avenue—I don't remember the exact address—and some of these things may be there, some of them.

Q. You say you do not recall the exact address?

A. No. But I'll get it for you.

Q. When was the last time you were at the premises?

A. 1948 or '49.

Q. '49. And what is the name of the company that's located at that address?

A. The Stewart Tool Company. We had an office in that building.

Q. And on what floor did you have your office?

A. We were on the second floor.

Q. On the second floor. And there are books and records located there at this time; is that correct?

A. There might be, Mr. Leone. I'm not certain.

Q. Where else, Mr. Giglio?

A. My attorney in Chicago, possibly; in the accountant's office.

[fol. 2876] Q. Which accountant?

A. Mr. Holzer, in Newark.

Q. And what is the full name and address?

A. Herman Holzer, on Commerce Street, in the bank building. I forget the name of the bank building. It's on Commerce Street.

Q. Where else?

A. I can't think of any place else that they might be at the moment, Mr. Leone.

Q. Therefore, you say records are located in a storeroom at your home, one; in the office of your attorney, Mr. Hensley, in Chicago, two; in the office on the second floor of the Stewart Tool Company, three; and in the office of your accountant in Newark, is that correct, in the bank building on Commerce Street?

A. Yes. There might be some scraps that Walter—in Walter Kohn's office, who handled our receivership; there might be some material there.

Q. Where else, Mr. Giglio?

A. I can't think of anywhere else at the moment, Mr. Leone.

Q. When were these records removed from 19 Rector Street, Mr. Giglio?

A. I honestly couldn't tell you.

Q. Were they removed at your direction?

A. Probably.

Q. Well, isn't it a fact that they were removed at your direction?

A. Very probably I ordered them removed, yes. Indeed, there is one more place that you might find some records. I owned, at one time, a home down in Shrewsbury, New Jersey, in Locust, New Jersey, and in a barn there I had some filing cabinets, and so forth. There might be some around there yet.

Q. Well, you sold those premises, did you not?

A. Yes, I know; but I sold it to a man who permitted me to keep some space there for storage.

[fol. 2877] Q. Anywhere else, Mr. Giglio?

A. Not that I can think of at the moment, Mr. Leone.

Q. How much time do you now want to collect the papers which are in this vicinity? For example, the ones that are in your home you could bring us tomorrow, could you not, Mr. Giglio?

A. Mr. Leone, I just beg of you to permit me to photostat those things I think are necessary to help me to defend myself in a trial that I know must soon come. I'm just pleading with you not to see to it that I just turn those papers over to the Internal Revenue Department through your office, because I have the greatest feeling that if they ever get them, I'll never see them again. It's happened before.

Q. Along that basis, would you excuse us for just one moment; I wish to explain something to the grand jury.

A. Certainly. If you would give me two weeks instead of a month, I will be in here with all the stuff.

Q. I will explain something to the grand jury, and then you will be advised accordingly.

(Witness excused.)

WILLIAM J. GIGLIO, recalled.

By Mr. Leone:

Q. Mr. Giglio, after a discussion with the Foreman and with the Grand Jury, it is their wish that you deliver these papers to this Grand Jury as soon as possible. Realizing, of course, that you might be in a position where you might [fol. 2878] need assistance to deliver these papers, and realizing further that your desire to make them available to the Grand Jury is in good faith and that you do wish to make them available at the same time that you wish to protect yourself at a future time, in case you should ever need these papers, it is therefore their decision that you do as follows:

As far as the papers in Chicago are concerned, it is their wish that you have one week, which means a week from tomorrow, Wednesday, the 23rd, in which to produce those papers; and you are to deliver those papers to this Grand Jury at eleven o'clock on the 23rd.

As far as the papers in this area are concerned it is their wish that you deliver them as soon as possible. Therefore, you have one of two alternatives, as they see it: one, that you produce them by tomorrow morning, at eleven o'clock; and if it is your wish that you have assistance in which to produce the papers, that you then authorize me to detail such assistance as you wish, to go to Shrewsbury, to go to Newark, or to go any place else where the papers are, as you have stated on the record, to obtain the papers, so that you will be personally in a position to deliver them by eleven o'clock tomorrow morning.

Further, a receipt will be given to you of any and all papers that are obtained. A complete record, piece by piece, if necessary, to your satisfaction, will be given to you so that a complete record of what papers are turned over by you will be made for you, and a receipt accordingly acknowledged.

A. All right.

Q. Do you therefore wish to have me——

A. I need no assistance to bring it in, nor could I conceivably spend the time it will take you to give me the receipt for each piece of paper, piece by piece, Mr. Leone.

[fol. 2879] It would take you not less than a month, I presume, even if you put four or five people to work.

I will be glad to deliver the stuff to you if I could have a copy of everything that I bring in here.

Q. You most certainly may.

A. May I ask you this: May I have two days, instead of one?

Q. There is a man shaking his head while you are speaking. Eleven o'clock tomorrow morning. Now, do you want any assistance?

A. No, I will do it.

Q. Will you deliver them by hand or by truck?

A. I will deliver them here in a truck for you.

Q. Very well. You are excused until tomorrow morning at eleven o'clock.

A. Thank you very much.

The Foreman: Mr. Leone, that finishes you for today?

Mr. Leone: I believe so.

(Witness excused.)

[fol. 2880] TESTIMONY OF WILLIAM J. GIGLIO BEFORE GRAND JURY, JULY 16, 1952

WILLIAM J. GIGLIO, recalled as a witness, having previously been duly sworn by the Foreman, testified as follows:

By Mr. Leone:

Q. Mr. Giglio, you are still under oath from yesterday morning?

A. Yes, sir.

Q. Yesterday morning, when you left here, the Grand Jury asked you to produce the books and records requested in the subpoena which was served upon you, and you were directed to bring all matters, all books and records, which were in this area, excluding the books and records which were in Chicago, is that correct?

A. That's correct.

Q. Have you now complied with that direction?

A. Well, I have a truck downstairs that has, in my opin-

ion, about four thousand pounds of material on it. There are probably thirty large cardboard containers in it. I worked until three o'clock this morning to take stuff out of filing cabinets and pack it in cardboard cartons, so that it could be carried in a truck, and so forth and so on; and I have that truck downstairs.

Q. Is there any record in this area—by that I mean, in Long Island or New Jersey or Newark—according to the manner in which you have testified yesterday—that you have not delivered?

A. Yes, sir.

Q. There is?

A. Yes, sir; and if you will give me until tomorrow morning, I will bring another truck as well loaded as this one.

Q. Very well. May I then suggest to the Foreman, to [fol. 2881] see how we expedite the removal of the material that has been produced here this morning, and we then direct the witness to produce the balance.

And, Mr. Giglio, I presume you have taken measures and steps to produce the books and records in Chicago?

A. Yes, sir.

Q. And you will produce them a week from this morning?

A. They will be produced sooner than that, if there is anything out there.

Q. You are excused.

A. Thank you.

(Witness excused.)

[fol. 2882] TESTIMONY OF WILLIAM J. GIGLIO BEFORE GRAND JURY, JULY 23, 1952

WILLIAM J. GIGLIO, recalled as a witness, having previously been duly sworn by the Foreman, testified as follows:

The Foreman: Mr. Giglio, you recognize that you are still under oath from the last appearance?

The Witness: Yes, sir.

By Mr. Leone:

Q. Mr. Giglio, when you were here last week you were directed to bring in certain books and records which you

stated were in Chicago. Have you now complied with that direction?

A. Yes. I have called Chicago, and there are none of these records that I thought might be out there. The only thing that my attorney out there had was some of his personal notes and a copy of the information of 1950.

Q. Have you any books and records which the subpoena called for, which you have not produced to date?

A. Yes.

Q. When are you going to produce those?

A. Either tomorrow or Friday I will bring in an additional truck-load, as the last two truck-loads I brought in.

Mr. Leone: Will the Foreman request that they be brought in tomorrow morning?

The Foreman: I feel, Mr. Giglio, that we should request that they be brought here forthwith. We asked last week that everything be brought in. When you indicated that it was impossible to bring everything in in one day, we extended it, and I think we had better get these things in.

[fol. 2883] The Witness: All right, I will bring them in tomorrow.

Q. Now, Mr. Giglio, another subpoena was served upon you this morning, requesting stock transfer records of certain corporations. Are you able to comply with that subpoena?

A. Yes. I think you will find that they are in the material that has already been brought in.

Q. In other words, you do not have any stock transfer records in your possession which you have not turned in?

A. No. To the best of my knowledge, it is either in the material that has been brought in, or in those which will be brought in.

Q. And the material you will bring in tomorrow morning will be the last of the books and records called for by the subpoena?

A. That's right. Could I ask if that couldn't be Friday? Tomorrow I must drive up to Pearl River in the morning. If that could be Friday it would be much more convenient for me. Otherwise I will have to get up at six o'clock in the morning to drive them in, and then bring in the records.

I brought in some fifty-nine great big cartons of the material, so that I have certainly made no effort not to bring in any material. You must have three or four tons already.

The Foreman: I would prefer to do this: Rather than express my own opinion at the moment, when you are excused from the witness stand we will see what the Grand Jury thinks about it.

[fol. 2884] The Witness: I was told that I will get a copy of this material, and now I am told that it will be rather difficult for the Government to give me a copy of the material that I bring in.

Would you rather that I make a copy of the material before I bring it in?

The Foreman: My information is that the Government will give you a receipt for everything that you bring in. You may have copies of it or get copies of it or ask for the return of it in any case in which you are defendant or in which you are sued.

The Jury, of course, has no facilities for doing that. The jury does not, I think, want to give you more time in which to make copies. I am sure that the jury will wish me to request Mr. Leone to cooperate with you in whatever you want to get, to the extent that it is at all necessary for such defense or such use as you may wish to put it.

Will you do that, Mr. Leone?

Mr. Leone: Yes, I will.

You are excused, Mr. Giglio.

(Witness excused.)

[fol. 2885] TESTIMONY OF WILLIAM J. GIGLIO BEFORE GRAND JURY, SEPTEMBER 2, 1952

WILLIAM J. GIGLIO, called as a witness, having first been duly sworn by the Foreman, testified:

By Mr. Leone:

Q. Mr. Giglio, I believe approximately five weeks ago was the last time that you were before this grand jury; is that right?

A. I am not certain of the date, Mr. Leone.

Q. Approximately. And at that time you came in answer to a subpoena duces tecum which was served upon you through your attorney, Mr. Cregan; is that right?

A. That is right.

Q. And that subpoena called for you to produce certain books and records; is that also right?

A. Yes, sir.

Q. Mr. Giglio, you were president of the American Brands Corporation, is that right?

A. That is right.

Q. Which corporation went into state receivership in the State of New Jersey in the year 1947 approximately, is that right?

A. That is right.

Q. And at that time when you last appeared before the grand jury you had produced approximately three truckloads or three station wagon loads of books and records, had you not?

A. Right.

Q. Which consisted of records of American Brands Corporation and Eatsum Food Products Company and the various companies listed on the subpoena except those which you had no connection with and those you had never had the records of, is that correct?

A. I have a receipt here from your office showing some 80 cartons of material delivered to you. Mr. Leone, may I read [fol. 2886] a statement prepared by my attorney before further questioning—if it pleases this body?

Q. Well, I don't know. May I first see the statement? I don't know that it's proper. (Is handed statement by witness.) In view of what's here I don't think—I might explain to the grand jury, I don't think that the statement as such is improper, but I think in effect, Mr. Giglio, that we will arrive at the same answers that might be contained in this statement by the questions I will put to you.

A. Well, now, that leaves me a little bit out, without knowing what to do now. My attorneys have adyised me to do certain things.

Q. Supposing I ask you the questions and then upon that advice we'll see where we get. May we do that? After

all, you are still, as I say, here to produce certain books and records.

A. I think this statement, Mr. Leone, would explain that whole thing. It's only a few lines.

Q. Assuming that it does, Mr. Giglio.

Mr. Leone: May I direct, Mr. Foreman, that the witness be directed to answer my questions and if there are any statements to be made that they be made at a later time?

Mr. Foreman: It seems fair.

Q. Mr. Giglio, have you at this time produced all the books and records as called for in the subpoena, of the American Brands Corporation?

A. The answer to that is right here, Mr. Leone.

Q. Will you answer the question, please, Mr. Giglio?

A. There remains some material which I feel impinges on [fol. 2887] my constitutional rights, particularly because I not only am the subject of an investigation before you, but also because I am the defendant in two informations filed against me September 14th, 1950, on tax matters, and I am awaiting trial in October. These informations and this investigation relate to my income. To take the residue of material from me would be a way of forcing me to give evidence against myself in the two informations, and is a device for the Government by this subpoena to cause me to disclose my defense in advance of trial. I feel my actions reveal my sincere intentions to cooperate in any investigation, but I should not be asked to violate my constitutional rights. For this reason my attorney has today filed a notice of motion to quash the subpoena in part, and I respectfully request this grand jury and the Assistant United States Attorney to defer further inquiry until a judicial determination of my legal rights may be had.

Q. Now, Mr. Giglio, have you produced all the books and records of the American Brands Corporation of which you were president?

A. May I confer with my attorney, Mr. Leone?

Q. I believe you have conferred with your attorney. Do you wish to answer the question, Mr. Giglio?

A. I should like to ask my attorney what my answer should be on that question because I haven't quite read all this to you.

Q. I believe you are familiar with the fact as to whether or not you have produced all the books and records; are you not?

A. Yes.

Q. Therefore, you needn't consult your attorney as to whether or not you have produced all the books and records.

[fol. 2888] A. All right. The answer to that question is that I have not produced all the books and records because to do so would impinge on my constitutional rights because the records that I have are parts of my defense material, and are my partnership records, which are personal papers——

Q. I am asking you this, Mr. Giglio, have you produced all the books and records of the American Brands Corporation?

A. I can only answer by saying my constitutional rights would be violated by answering that question or by producing any further materials that I have because they are to be used by me in my defense.

Q. Therefore, am I to understand that you are claiming privilege?

A. Constitutional privilege, yes.

Q. As to answering that question?

A. Yes.

Q. In that case, to any and all questions I believe you are familiar with the manner in which you are to claim any privilege, are you not, Mr. Giglio?

A. If you will inform me what my constitutional rights are and exactly how to best state them.

Q. You, as a citizen, or as an individual, have a constitutional right to refuse to answer any question which you feel incriminates you in a crime, and if it is your intention to claim a privilege as to any question that may be put to you, you are to claim that privilege specifically to each and every question. Further, I wish to admonish you, Mr. Giglio, that all questions to which you feel the answer may incriminate you and to which you exercise your constitutional privilege, that privilege is to be exercised in a judicious and wise manner, and is not to be frivolously used or to flaunt or claim a privilege before [fol. 2889] this grand jury, because if you so should exercise

your privilege, then this grand jury may take steps which they feel would be commensurate with the manner in which you answer these questions. This last thing is said, Mr. Giglio, not as a threat, but only, as you said, to point out what a constitutional privilege is. In other words, it is a privilege where a man has a sincere and honest feeling that the answer to a certain question will incriminate him in a crime; then he is constitutionally privileged not to answer that question.

A. Well, my attorneys have filed a motion with the court here today to determine that very question.

Q. That may be, Mr. Giglio, but that motion is not before this grand jury, so we will not argue about it, and you may do as you wish concerning the questions which I will now put to you. When you produced the books and records of American Brands Corporation did you at that time retain any of the checks of the American Brands Corporation? What is your answer to that, Mr. Giglio?

A. My answer is that same reasoning that I gave you before, which my attorneys told me to use.

Q. In other words you claim you will not answer that question because it may incriminate you?

A. Yes. I am told that on any question I am to stand on constitutional grounds until this has been decided by a court as to whether or not I have such grounds to stand on.

Q. Did you produce the check stubs of the American Brands Corporation when you produced the 86 cartons previously?

A. I don't know. I brought in three truckloads of material and I don't know to this day what's in them.

[fol. 2890] Q. You received a receipt, did you not, for them?

A. I received a receipt but it is too broad. I have never gone through that material with your people here.

Q. Is it your answer that you did not produce them or you do not know whether you produced them?

A. I don't know whether I produced them or not.

Q. Did you produce all the books and records of the American Brands Corporation with you today?

A. All that were available to me at that time, yes.

Q. You say you did produce them all?

A. All of them that I had with me at that time.

Q. Have you now any records of the American Brands Corporation in your possession?

A. Yes.

Q. When are you going to produce those records?

A. As soon as there is some judicial opinion passed on whether or not I consider what my attorneys consider them are defense material. I think it's a question of constitutional rights.

Q. In other words you are refusing to submit those records to this grand jury?

A. I am afraid, Mr. Leone, that not being an attorney I have no idea any more than any other citizen what constitutional rights mean. Now, my attorneys tell me that they filed a motion which would make very clear this question, and then if the court decides that I must bring in even that material which we must consider my defense material, then I will just have to bring it in. I am in a position of not knowing what my rights are.

Q. In other words—will you step outside then, please?

A. May I leave this here?

Q. You may.

(Witness excused and then recalled.)

[fol. 2891] By Mr. Leone:

Q. Mr. Giglio, while you were outside did you have an opportunity to discuss this matter with your attorney?

A. Yes.

Q. I again ask you, do you have any records of American Brands Corporation which you have not produced subject to subpoena?

A. May I ask a question that my attorney asked me to ask?

Q. What is that?

A. Because these ladies and gentlemen are apparently of another grand jury, am I still under the same subpoena that I was under the first time?

Q. You are, sir.

A. My attorney asked me if I would ask you to tell me what my constitutional rights are.

Q. Well, I feel that that is up to your attorney to tell you as to your constitutional rights.

A. You said I may only refuse to answer in the event the answer would incriminate me in a crime.

Q. Exactly.

A. And he doesn't think that's his understanding. He said anything that might tend to incriminate or degrade me.

Q. All right. Assuming—do you feel this will degrade you? That is a question of law we will not argue, Mr. Giglio. However, you have now asked the question. Will the reporter read the question asked earlier of Mr. Giglio, please? (Question read as follows: "I again ask you, do you have any records of American Brands Corporation which you have not produced subject to subpoena?")

A. I answered that before, that I had, but I am not producing that because—and now, if you will give me a moment, I will find that passage here—there remains some material which I feel—will I have to go through this every time?

[fol. 2892] Q. Go right ahead with your answer.

A. There remains some material which I feel impinges on my constitutional rights, particularly because I am not only the subject of investigation but because I am a defendant in two informations filed against me September 14, 1950, and am awaiting trial in October.

Q. Mr. Giglio, do you still have the minute books and the check stubs and the stock transfer records of American Brands Corporation?

A. I don't know, Mr. Leone.

Q. What records do you have of American Brands Corporation?

A. I am standing on constitutional grounds that this information is part of my defense material.

Q. In other words, you claim constitutional privilege on the grounds it may incriminate you or degrade you?

A. No, not that alone. That's my constitutional grounds. But also on the grounds you are asking me to give you my defense material in a forthcoming trial in which I will be a defendant.

Q. Mr. Giglio, with the Foreman's permission, I am di-

recting you to return tomorrow morning at 11 o'clock, and during that time I will advise you to consult with your attorney concerning the matters which have been discussed here this morning, if you feel you need advice, and, further, regarding the production of the records of American Brands Corporation, and of American Agar Corporation, of American Brands Wholesale Corporation, American Trucking and Forwarding Corporation, and American Sweets Corporation, as called for in the subpoena served upon you in July and which you have not to this date produced. Is that correct, Mr. Foreman—11 o'clock in the morning, tomorrow morning?

[fol. 2893] The Foreman: Yes.

The Witness: How about the partnership material, Mr. Leone? Is that under question too?

(Mr. Leone to witness, continuing:)

Q. You must produce any and all records.

A. I am saying, is that part of what I must bring in, according to what you just said——

Q. You have been subpoenaed, Mr. Giglio, and according to the terms of the subpoena you have been directed to produce certain books and records. Those books and records have not been produced by you and it is up to you as to whether you wish to produce them and comply with the terms of the subpoena and whether you don't, and if you don't, this grand jury will consider whether your refusal in bringing in those books and records is proper or improper, and whatever their feelings may be they will take steps accordingly. You are excused, Mr. Giglio.

(Witness excused.)

[fol. 2894] Testimony of William J. Giglio Before Grand Jury, September 3, 1952

William Giglio, called as a witness, having previously been sworn by the Foreman, testified as follows:

The Foreman: Mr. Giglio, you realize you are still under oath?

The Witness: Yes, sir.

By Mr. Leone:

Q. Mr. Giglio, have you this morning produced any records of American Brands Corporation, of American Agar Corporation or any of the other corporations which are listed in the subpoena?

A. No, I have not, Mr. Leone.

Q. Do you intend to produce those corporate records?

A. I would like to read into the record this statement that my attorney has asked me to read into the record, Mr. Leone, with your permission.

Q. Mr. Giglio, will you—as to whether or not your attorney has given you any statements to read into the record, I feel that it is up to you to answer the questions which are put to you; and if you, in answering those questions, should incorporate any statements or instructions given to you by your attorney, that is entirely within your prerogative. However, as far as reading any statements, I don't think that is proper.

Therefore, will the reporter repeat the question that was asked the witness earlier?

(The foregoing questions and answers were read by the reporter.)

[fol. 2895] Q. Do you know the question now, Mr. Giglio?

A. Yes, Mr. Leone. I intend to comply with that subpoena in the event the Court would decide that these books and records that you are asking should be given to you over the objections that are announced in the motion that my attorney is making.

Q. Well, as I told you yesterday morning, Mr. Giglio, that motion is not before this grand jury. Therefore, the question, again, is, are you going to produce the books and records of the various corporations called for in the subpoena?

A. To that question——

Q. Yes or no.

A. Mr. Leone, my attorney has asked me to get this statement into the record or have you put your objection to my getting this statement into the record on record.

Q. I don't know what the statement is like and cannot make any objection to it. So, therefore, I again maintain——

A. Well, could I read it, because it would clarify this entire situation, Mr. Leone.

Q. I don't know that it would, Mr. Giglio. You have certain records of the American Brands Corporation, have you not, in your possession?

A. Yes, that is right.

Q. And they are requested for in the subpoena?

A. That is right.

Q. Why have you not produced those records before this grand jury?

A. Mr. Leone, the only way I can say this, because I'm not an attorney, is to read what I have been given to read. May I read it? It will explain it.

Q. I don't think it's proper for you to read it; because the answer is yours, not your attorney's or anyone else's. Are you going to answer that question, Mr. Giglio?

A. Why I have not complied?

[fol. 2896] Q. Yes.

A. I don't know how to answer this question without reading it. It will take me one minute.

Q. I'm certain, Mr. Giglio, that you know the answer to the question.

A. Well, may I answer it in my own way, then?

Q. You may answer it.

A. On advice of counsel, I would like to read this statement. I——

Q. Mr. Giglio, will you refrain from reading any statements? Will you now answer the question? Where are the books and records of American Brands Corporation, and why have they not been produced?

A. They are in my possession, and I have not produced them because my attorney tells me that I need these books and records for the reasons given in this statement. Mr. Leone, I don't know any other way to tell it to you.

Q. Mr. Giglio, do you personally have any reasons for not producing these books and records?

A. Yes.

Q. What are those reasons, without reading from any statements?

A. Mr. Leone, I can't give my reasons without reading from this statement, because they state my reasons much more clearly than I can put it.

Q. In other words, am I to understand, and is this grand jury to understand, that you refuse to produce the books and records of American Brands Corporation?

A. Yes. And I think it ought to be on the record that you refuse to let me read a statement that's been prepared to read to you, Mr. Leone.

Q. Well, you are excused, Mr. Giglio. Will you wait outside?

A. Thank you.

(The witness left the room, and was then recalled.)

[fol. 2897] Q. Mr. Giglio, this matter has been discussed with the Foreman, and it is my feeling and the grand jury's feeling that, because of your conduct in refusing to answer the questions, you accompany this grand jury and the marshal attending it to Room 318 to appear before Judge Weinfeld who is sitting in Criminal Part. And, therefore, it might——

A. I don't think that—oh, excuse me. I don't think that I have refused to answer the questions. I think that you have refused to let me answer the questions.

Q. Very well. We'll let the Judge determine that.

A. Yes, sir, all right.

(Whereupon, the grand jury, Mr. Leone, the witness William Giglio and the reporter proceeded to Courtroom 318, Hon. Edward Weinfeld, presiding.)

[fol. 2898] IN THE MATTER OF WILLIAM J. GIGLIO, SEPTEMBER 3, 1952

Before:

HON. EDWARD WEINFELD, District Judge.

New York, September 3, 1952;
12.30 o'clock p. m.

Mr. Leone: May it please the Court, this is an application to have this witness directed to produce certain docu-

ments which are requested for in a subpoena, or, in the alternative, that he be cited for contempt.

If I may, I would like to give your Honor a little background as to this matter.

Back in July 1952, a subpoena was served upon the witness, William J. Giglio, through his attorney, Mr. Cregan, and at that time the witness appeared before the Grand Jury and requested that he be given a certain amount of time, to wit, 60 days at first, and then 30 days, in which to produce the books and records of various corporations and companies named in the body of the subpoena.

During the process of questioning, there came a time when the witness refused to answer certain questions. At that time the Grand Jury felt it expedient to appear before the judge sitting then in Criminal Part. At that time I believe it was Judge Davis, a visiting judge.

Upon the direction of his Honor at that time, the witness returned to the Grand Jury room and stated that he would [fol. 2899] answer the questions, and that if he were given then a short time, he would produce certain books as asked for in the body of the subpoena.

Following that, he was directed by the Grand Jury to produce the first part of the books and records the following morning, and as far as it was known, the witness then continued to comply with the subpoena and to comply not only with the direction of Judge Davis in that he was to produce certain corporate books and records, but, further than that, he also produced records concerning which were in the body of the subpoena and concerning which he was not questioned.

Partnership records of approximately 80 cartons were delivered during the space of three days by the witness in a stationwagon, and they were delivered to an office where they were inventoried by agents presently working under my direction in the Internal Revenue Bureau.

The witness was given a copy of the inventory, which inventory consisted of numbering the boxes and enumerating, as best as feasibly possible, the contents thereof.

After he was given the inventory, a more careful study and inventory was then made of the books and records which had been produced.

The witness, through his attorney, and personally, had been in continuous touch with this office.

Therefore, yesterday morning he was asked again to appear before the Grand Jury, and I have before me a tran- [fol. 2900] script of the minutes of yesterday morning's proceedings in the Grand Jury, and further, there are some proceedings which took place this morning.

In substance, the witness is being asked concerning the production of certain books and records of the American Brands Corporation, one of the companies enumerated or one of the corporations enumerated in the subpoena.

Concerning that, it is the witness' statement that he has the books and records, and, further, that he does not wish to produce them since they would impinge upon his constitutional rights; and, further, he needs them for his defense in an information, of which I believe your Honor might be familiar, which was filed in September of 1950 by the then United States Attorney, charging this defendant and others with certain violations of Section 145(a) of Title 26 of the Internal Revenue Code.

Based upon that refusal—further I might add that the witness also has requested to read into the record a statement of his attorney rather than answer questions.

And it is with that background, and with the record presently here, that the Grand Jury and the Government make an application that this witness be directed to furnish the books and records of the American Brands Corporation, or, in the alternative that he be cited for contempt.

There is one other thing that I forgot to add. One of his grounds for refusal is the fact that a notice of motion was [fol. 2901] served upon the United States Attorney yesterday, which motion states in the notice that it is going to request that the subpoena be quashed in part.

The United States Attorney is cognizant of that, but, at the same time, this witness is before a Grand Jury, and he feels that the issue should be resolved now.

If any motion were to be made, and if it is going to be made, there is a question of whether said motion is timely under provisions of Rule 17(c).

The witness was served six weeks ago, and, therefore, if any motion should have been made, it should have been

made timely, and, therefore, that argument is urged as another method of delay and impeding the process of this Grand Jury.

If I may, I will offer a transcript of the first session, or otherwise I will send a messenger for the stenographer and we can have this morning's proceedings for your Honor to consider this morning.

I have a carbon copy which was furnished to me yesterday, and, as far as I know, it is a correct transcript.

Does your Honor wish to look at it?

The Court: Is there any issue about it being a correct transcript?

Mr. Leone: I do not know. I do not know whether Mr. Giglio wishes to raise an issue about that.

The Court: Have you seen that transcript?

The Witness: No, sir.

[fol. 2902] Mr. Leone: Would your Honor care——

The Court: That is a transcript of the testimony or of the proceedings, rather, which took place before the Grand Jury, on the basis of which an application is now being made to direct you to answer or else be held in contempt.

As I understand it, there is further testimony or proceedings which were had this morning?

Mr. Leone: That is correct.

The Court: And you do not have a transcript of that here?

Mr. Leone: We will have the stenographers here.

The Court: All right.

The Witness: If I may, your Honor, this morning—shall I stand while I talk?

The Court: Yes, sir, stand.

The Witness: This morning's transcript is much shorter, your Honor, and they probably will be able to recognize it better than I can. This entire thing could take up the time of the Court—may I ask one question: May I be permitted an attorney in this proceeding, your Honor?

Mr. Leone: Your Honor, this is a proceeding before the Grand Jury.

The Court: I will listen, in the absence of the Grand Jury, with respect to any point that you wish to raise.

The Witness: I, of course, am not familiar with the legal technicalities——

The Court: What is the basis of your refusal to answer the questions?

[fol. 2903] The Witness: The basis of my refusal to answer the questions, your Honor—I didn't refuse to answer the questions. I asked Mr. Leoné to permit me to put into the record a statement that I have here, that I think would give much more clearly my reasons than I could voice them without reading them from this paper.

I was refused permission to put this into the record. It is a matter of one page——

The Court: On what ground are you refusing to answer the questions?

The Witness: On constitutional ground and other grounds that I have listed here.

The Court: What are the constitutional grounds upon which you base your refusal to answer the questions?

The Witness: May I read this, your Honor?

The Court: I will let you read it. Go ahead.

The Witness: I have complied with the Grand Jury's subpoena to the best of my ability, and have supplied the United States Attorney's office with a great quantity of material consisting of 80 cartons of material for which I have a receipt.

This, together with the books and records seized by the Government on June 20, 1949, on the receivership of American Brands and its subsidiaries, constitutes the overwhelming bulk of the material pertaining to my business affairs.

There remains some material which I feel impinges on my constitutional rights, particularly because I not only am the subject of an investigation before you, but also [fol. 2904] because I am the defendant in two informations filed against me on September 14, 1940 on tax matters, and I am awaiting trial on these informations and this investigation relating to my income.

To take this material from me would be a way of forcing me to give evidence against myself in the two informations and is a device by the Government, by this subpoena, to cause me to disclose my defense in advance of trial, and I should not be asked to violate my constitutional rights.

For this reason my attorney has today filed—that was

yesterday, your Honor—filed a notice of motion to quash the subpoena in part, and I respectfully request that this Grand Jury, the United States Attorney, and this Court defer further inquiry until a judicial determination of my legal rights may be had.

Incidentally, this motion is to be heard on Monday, September 8th, your Honor.

The Court: These are books and records, as I understand it, of a corporation, are they not?

Mr. Leone: They are, your Honor. He is specifically being questioned, although, as I stated earlier, the body of the subpoena relates not only to corporations but to companies, but the witness is specifically being questioned concerning the books and records of American Brands Corporation and some other corporations, and that is what the Government seeks and what this Grand Jury seeks.

[fol. 2905] The Witness: May I say something, your Honor?

The Court: Yes.

The Witness: You should be made aware, your Honor, that these corporations were liquidated in 1948 in a receivership; that the receivers then ordered that all books and records of these corporations be returned to me—I, who was the owner of these corporations.

The Court: You mean you owned stock in them?

The Witness: Yes, I owned the stock in them.

Now, so that we are raising a point that these are no longer corporation records. This also is to be argued on Monday.

The Court: Where are these questions?

Mr. Leone: Pardon me, your Honor.

The Court: Mr. Giglio, I understood that you wanted to make a statement and that you were not permitted to read the statement that you just read in this courtroom. If I am not mistaken, I see the very substance of that statement on this page——

The Witness: I was referring to this morning, your Honor.

The Court: You read the very statement that appears on this page of the testimony——

The Witness: I was referring to this morning.

The Court: To the Grand Jury this morning?

The Witness: That's right.

The Court: That you read this morning?

The Witness: That's right, but I was referring to this morning. I wasn't permitted to give an answer to a question that was asked me by reading the statement.

[fol. 2906] The Court: What are the questions, Mr. Leone, that you press for an answer?

Mr. Leone: Your Honor, specifically——

The Court: With respect to yesterday's transcript.

Mr. Leone: It isn't the questions themselves that the Grand Jury requests; it is the ultimate production of these records as to which the defendant refuses to answer specifically where they are and to produce them.

He claims, as your Honor heard: I refuse to produce that because they incriminate me; I need them for my defense and so forth.

And that is what is being pressed. It is not the answers to the questions, as your Honor sees from the transcript, that certain questions are being answered, but, at the same time that they are being answered, the records are not being produced, and it is these corporate records which the Grand Jury seeks.

The Court: Those are the records of the American Brands Corporation?

Mr. Giglio: Yes, your Honor.

The Court: You have already testified that you were president of American Brands Corporation, is that right?

The Witness: Yes, your Honor.

The Court: And that you do have the records.

The Witness: Well, I don't really know what records Mr. Leone is referring to, your Honor. He was saying American Brands' records. I don't think that that is com-

[fol. 2907] pletely so. I think he wants other corporations.

Mr. Leone: Well, yes, other corporations.

The Witness: I don't know what ones you mean.

Mr. Leone: I wasn't just questioning concerning those——

The Court: We are at the present moment only concerned with the records of the American Brands Corporation.

Mr. Leone: Exactly, your Honor, and I believe——

The Court: Those that have not been submitted thus far?

Mr. Leone: Exactly, your Honor.

The Court: You have testified that you do have other records?

The Witness: Oh, I have other records. I do have some records, your Honor. I don't know what Mr. Leone wants exactly.

The Court: I will direct you to produce all the records of the American Brands Corporation that you have.

Mr. Leone: And, your Honor, when is the witness to produce them?

The Court: Does the Grand Jury sit this afternoon?

Mr. Leone: No, it does not, your Honor.

The Court: Tomorrow morning?

Mr. Leone: Tomorrow morning at 11 o'clock.

The Court: Produce them tomorrow morning.

Mr. Leone: And in the alternative, if the witness fails, at that time, the Government will move to cite him for contempt.

[fol. 2908] The Court: Very well.

Mr. Leone: In that case, your Honor, may the jury return——

The Court: I direct you to produce the records of the American Brands Corporation, those that you have not delivered up to this time.

Mr. Leone: And I believe that I will be able to enumerate them more carefully in the Grand Jury because I have a list exactly of what is missing.

The Court: If you have a list of what is missing, I instruct you to deliver it to this witness now and require its production.

Mr. Leone: Very well, your Honor.

The Court: The Court is not going to permit a roving expedition with respect to records that are unidentified.

Mr. Leone: They have been identified.

The Court: For his failure to comply with the Court's direction there will be a contempt order issued on application made by you, and under those circumstances I think there should be a specific direction. If you have a list

now of those other books and records, and the witness has indicated that he has other records, if you submit that list to me, I will specifically direct him to produce those records.

Mr. Leone: The first is the check stubs——

The Witness: The check stubs of what?

Mr. Leone: Of the American Brands Corporation, as to all of its bank statements.

Secondly, the Government has in its possession certain checks of the corporation and there are other checks, which [fol. 2909] which I do not have presently a list of, but they are in my office, specifically by number, and which checks are now missing, and if Mr. Giglio and his attorney will come to my office I will also give them a list of every check that is missing.

The Witness: Your Honor, this would work a hardship on me to assume that after some seven or eight years I could locate every check because it would be assuming something that I cannot do.

These records have not been in my hands all of these years. My companies went through receivership, your Honor.

The Court: Mr. Giglio, what records were you referring to of the American Brands Corporation which you had when you testified before the Grand Jury that you still retained certain records?

The Witness: I have some check stubs, checkbooks, of these corporations. That is what I have, your Honor.

Mr. Leone: Your Honor, if it comes to that, the Government is prepared—when it comes to a point that Mr. Giglio states he cannot produce certain records, then it comes to a question of fact as to whether or not Mr. Giglio has not had them in his possession for the length of time——

The Court: I am not going to pass on that point.

Mr. Leone: That is another point.

The Court: You are directed, and I take it that you understood the direction, to produce all those checks and checkstub books.

[fol. 2910] Mr. Leone: That's right, and all canceled checks which have not been produced.

The Court: And all canceled checks, and that is with

reference only to the American Brands Corporation's checkstub books and canceled checks.

Mr. Leone: And, further than that, the stock certificate ledger and the minutebooks of the corporation, of American Brands, and that is all, your Honor.

The Court: You do not want the stock transfer book?

Mr. Leone: I am sorry, I meant also the stock transfer book. I thought I had included that.

The Court: Have you had a list of those?

The Witness: The things I am being asked to bring in, so that I can be very clear, are the check stubs, whatever checks I might have, stock certificate, stock certificate book, and the minutebook?

Mr. Leone: The minutebooks and the stock transfer book.

The Witness: And minutebooks and transfer book of American Brands Corporation.

The Court: You are to produce them tomorrow morning at 11 o'clock before the Grand Jury.

Mr. Leone: Thank you, your Honor. We may advise the jury that they are finished for this morning and that they will resume tomorrow morning.

(Jury left courtroom.)

Mr. Leone: Your Honor the defendant wishes—Mr. Giglio, a defendant in another information which is pres- [fol. 2911] ently pending in this court and to which I earlier referred, asks that he be granted permission by this Court through his attorney to extend the limits of the bail bond.

I have advised his attorney, Mr. Cregan, that the United States Attorney would consent to extending the limitation of the bail bond in certain respects, and the proposed order has been drawn.

However, I do not feel, in view of your Honor's direction, that the application should be made today.

However, Mr. Giglio is outside and if your Honor wishes to hear him——

The Court: Do you want me to hear him?

Mr. Leone: I mean, it is up to your Honor.

The Court: If you have a motion, I will hear anything.

Mr. Leone: As I say, it is not on yet.

The Court: I will call it out of turn.

Mr. Leone: Very well, your Honor. I will speak to Mr. Giglio and we will arrange a time.

[f 2912] TESTIMONY OF WILLIAM J. GIGLIO BEFORE GRAND JURY, SEPTEMBER 4, 1952

WILLIAM J. GIGLIO, recalled.

The Foreman: Mr. Giglio, you are still under oath, do you understand?

The Witness: Yes, sir. May I first apologize for being so late. My car broke down on the Jersey Turnpike.

Mr. Leone: The grand jury was advised of that and they understand, I am sure.

By Mr. Leone:

Q. Getting back to yesterday morning, Mr. Giglio, at that time Judge Weinfeld directed that you produce the cancelled checks, the minute book, stock transfer ledger, stock certificate book and the check stubs of the American Brands Corporation. Have you now complied with that direction?

A. To the best of my knowledge, to the best of my ability, yes, sir.

Q. Are those the cancelled checks, sir? A. These are the only cancelled checks that I could find and here are the only check stubs, minute books and so forth that I could find.

Q. I see that they are not in order—are they?

A. I wouldn't know.

Q. You say that these are the only cancelled checks that you have?

A. This is all that I have been able to find and this is all the material I have been able to locate in the past ten days or two weeks.

Q. Mr. Giglio, when you produced the checks originally in the carton in which you produced various checks, cer- [fol. 2913] tain checks had been taken out of them, is that right?

A. Well, by the evidence that you have additional checks here, obviously certain checks were taken out. Incidentally, and obviously, not by me.

Q. I did not say that. And the checks that were taken out you have now produced?

A. Mr. Leone, I have produced here all those checks that I was able to find in the last couple of weeks, with those check books or check stub books—that is right.

Q. And you have now produced everything that has been required of you by the direction of Judge Weinfeld?

A. I have now produced everything that I could find. I have nothing else that Judge Weinfeld asked for.

Q. What have you produced besides the checks and the check stubs that I see there?

A. Well, I have produced here some minute books. Now, if you will bear with me for one moment. There are check stubs, Mr. Leone, of American Brands Corporation, there's a minute book of American Brands Corp., a minute book of American Agar Corporation which was not required but I guess it can stay here, stock ledger and transfer record American Brands Corporation, stock certificate book American Brands Corporation.

Q. Very well. As far as these checks are concerned, Mr. Giglio, they will be compared against a record which has been made by Agents of the Bureau of Internal Revenue listing the checks of the American Brands Corporation which have been missing. Now, passing over from that to the other corporations which are listed in the subpoena, have you produced any other records other than those which you were directed to by Judge Weinfeld yesterday, [fol. 2914] of the other corporations?

A. I see the minute book of American Agar Corporation.

Q. Have you any cancelled checks of American Agar Corporation?

A. With me today.

Q. No, not with you.

A. I don't think so, Mr. Leone.

Q. How about American Brands Wholesale Corporation?

A. I think I may have some of those.

Q. And American Trucking and Forwarding?

A. I don't think so.

Q. There would only be one or two there.

A. I don't think so.

Q. How about American Sweets Corporation?

A. I don't think so.

Q. Based upon whether or not you have them—with the Foreman's permission, I am now going to direct that you produce the records of the corporations just previously mentioned, and if you would like I will give you a list so that you will be aware of them—tomorrow morning to this grand jury. Judge Weinfeld in the meantime will be advised that these records have been produced and further he will be advised of the direction to you by this grand jury that you are to produce the other corporate records.

A. What records are you speaking of?

Q. The records of American Sweets Corporation, American Trucking and Forwarding Corporation, American Brands Wholesale Corporation and American Agar Corporation. Now, I am directing you on the statement—am I correct in assuming this, that you have produced each and every scrap of record of American Brands Corporation which you have? A. I have produced every bit of American Brands records that I have.

Q. In accordance with the same way you have produced [fol. 2915] here, you are to produce tomorrow morning to this grand jury the same—any scrap of record that you may have. In other words, we are not going to limit you to cancelled checks or anything else—any scrap of corporate records you have of the following four corporations.

A. You are familiar with the fact, Mr. Leone, that the Internal Revenue Department have had these books and records since 1948?

Q. That was previously discussed and I wish to advise you——

A. You are saying, bring in the record.

Q. What they already have I am apprised of. The records that were seen by Mr. Nadel, the accountant who was assigned by the receiver in New Jersey. For your information a list has been made of those records so that we are familiar with what records there were and what rec-

ords the receiver then received. What the receiver had, we now have; therefore, based on what you have, the other records of these corporations, you are directed to produce tomorrow morning, and I will give you a list, if you do not have it—I will give it to your attorney, so you will be sure to have it.

A. I'd like a list.

Q. That means every scrap of record you have of these four corporations. Further, when you came in you saw there were three subpoenas which had been prepared?

A. Yes.

Q. You were asked and directed to comply with those subpoenas tomorrow morning.

A. To the best of my ability, some of the corporations I had nothing to do with.

Q. Assuming that to be the case, we will first see what you will turn up and then we'll go into any legitimate reason why you cannot turn them up. We will note those you cannot produce. You will then offer any explanation you wish. Do you understand?

A. Yes.

[fol. 2916] Q. You are excused.

A. May I ask one question, please?

Q. Yes.

A. Before the last grand jury when I was asked to bring in all the records of these companies and corporations and so forth, I was told by the grand jury and by yourself that I could have a record of everything that I brought in.

Q. That's correct.

A. I was also told that I could have inspection of this material whenever I found it necessary to inspect it.

Q. May I interrupt you there. You are advised that under the existing law, upon proper application being made—if you mean an inspection in preparation for trial or any similar situation, that is guaranteed to you under the interpretation of the Bowman Dairy case—your attorney will be more familiar with that. As far as making any copies, I believe, and your attorney is right outside and so is your associate, Mr. Lawn, you have been advised and

you are advised here in the grand jury, you will be permitted to have a copy of any document any time you felt you wanted to go to the expense of making a copy of anything you produced to the Government. You are free to do so. Is that correct?

A. May I answer it in this way: I was advised of that after I was told in the grand jury room——

Q. If you have anything to ask of the grand jury they will be answered if they are pertinent, and if they are not pertinent they can be had through your attorney with me. Is there anything else now?

A. No.

Q. You are excused.

(Witness excused.)

[fol. 2917] TESTIMONY OF WILLIAM J. GIGLIO BEFORE GRAND JURY, SEPTEMBER 5, 1952

WILLIAM J. GIGLIO, recalled.

The Foreman: Do you realize you are still under oath, Mr. Giglio?

The Witness: Yes, sir.

By Mr. Leone:

Q. Mr. Giglio, when you left yesterday morning you were directed at that time to bring the records of American Agar, American Trucking, American Sweets—have you, first of all, complied with that direction?

A. Yes—well, I was subpoenaed yesterday——

Q. Before we come——

A. —I am going to tell you what I have.

Q. All right.

A. I was subpoenaed to bring certain things, but those things that were not under the subpoena, which are the residue of the American corporations, American Sweets—may I enumerate them as to exactly what they are, please?

Q. Yes.

A. The check books from the beginning to the end of the American Trucking and Forwarding Corporation——

Q. As long as you are on that corporation, how about the cancelled checks of that corporation?

A. You have those, Mr. Leone.

Q. You have already delivered those?

A. I delivered those two months ago.

Q. Have you the minute books or stock certificates——

A. You have those.

Q. This is the only matter that you do not have now? [fol. 2918] A. This is the only material on these corporations that I have been able to find. This is everything that I have and everything I have been able to find on these corporations.

Q. Go on.

A. The check books of the Van Dyke Industrial Company, all check books of American Brands Wholesale Company from the beginning of the corporation until the end of it, all check books from the beginning to end of American Sweets Corporation, and all check books from beginning to end of American Agar Corporation, cancelled checks and bank statements of corporations. This is the residue of it.

Q. Just so there will be no mistake, how many books are there here—sixteen, is that correct, Mr. Giglio?

A. Sixteen is correct, Mr. Leone.

Q. Going back for just a moment before we come to the subpoenas which were served upon you yesterday. Originally when you appeared before this grand jury you advised that your books and records were kept in various places, is that right.

A. That is right.

Q. Would you now repeat—as I remember where you said those books were located—so we may have the record straight.

A. They were located at my home, at a plant in Jersey City, at a plant in Newark——.

Q. What plants were they?

A. What plants?

Q. When you say plants, be specific, so we have it on the record.

A. The Heparin plant in Jersey City. I thought at that time there were some at the Stewart Machine & Tool plant:

none of these were there. I thought—incidentally, all of these things were places that I thought the books and records might be, because some of these books and records [fol. 2919] have been—all these corporations are dead now some six or seven years——

Q. Just enumerate the places that you thought they might be?

A. At my attorneys' office in Chicago, or my accountants' office in—or rather my lawyer's office in New York and my accountant's office, and several of them over——

Q. Did you also mention an old barn or something?

A. Yes; a barn or house that I once owned.

Q. Where was that?

A. That was in Locust, N. J.

Q. And you looked in all those places?

A. Yes.

Q. Having looked in all those places you have produced all records that you have been able to find?

A. These are all the records I have been able to find up to this time.

Q. So far as you know you have retained no others?

A. I have no other records that you have subpoenaed here.

Q. Yesterday you were served with a subpoena for the Lorain Food Corporation. Have you produced those records?

A. Yes; I have.

Q. All the records of that corporation?

A. I have all the records of this corporation that I have been able to find—and may I enumerate what I have here? The general ledgers for the entire business life. Now, all of this is to the best of my knowledge; I am not an accountant. I am giving you—because I see here from the beginning of '46 to '47, when the corporation went into receivership.

Q. Do you have any invoices of Lorain Food?

A. Yes; I have those here too. I have the general ledgers for the life of the corporation—that's to the best of my knowledge, Mr. Leone. I have here the purchase book, the sales book, the journal, the petty cash book and the cash book, which [fol. 2920] to my lay mind represents all of the books of that corporation.

Q. You say to your lay mind. By that you mean there are no other books in existence?

A. I assume there are no other books than the ones I mentioned.

Q. You do not know whether there are any others?

A. I wouldn't know if there are any others, but I assume that makes up the entire books of the corporations. I have here a book that says accounts receivable and accounts payable book. I have here two check books which are, to the best of my knowledge, the check books that cover the entire period of the corporation's activities. I have here one folder—

Q. One red folder?

A. Yes; one red folder of purchase invoices, sales invoices and other material that pertains to purchases and sales of the corporation.

Q. Cancelled checks?

A. You got all of those, Mr. Leone. There may be some here.

Q. What about the Dubois Associates?

A. Dubois Associates, Mr. Leone, was a corporation—when you gave me this yesterday, for a minute I did not even know what this was. On reflection, Dubois Associates was a corporation which was formed in 1945 or six, and I am not certain now. The purpose was, of that corporation was, to be used originally, I believe, for some real estate venture. That never panned out. So that Dubois Associates was never active to my recollection. It never did any business that I can remember other than I think it was on the lease at 19 Rector St.

Mr. Leone: Will you suspend here, Mr. Giglio? We'll pick it up, as the grand jury has to file certain indictments. [fol. 2921] You are excused. You retire outside and we will come back.

(Witness was excused and later recalled.)

By Mr. Leone:

Q. You stated, Mr. Giglio, that Dubois Associates was a real estate corporation and was inactive and except for a lease you might not have transacted any business at all?

A. I think that the only business it actually transacted, to the best of my recollection, was when we built an office on Rector Street, at 19 Rector Street, which were the offices of all of these companies or corporations; that Dubois Associates was the firm through which we built those offices. My recollection of it is very poor. I do not think I have ever seen the books and records which you asked for. I do not think there are any such things.

Q. You have one other—Berland Corporation?

A. Yes; on the Berland Corporation you ask for cancelled checks and I have brought in all those cancelled checks which I could find on this corporation. Now, the Berland—would you like me to tell you something about it?

Q. I want to know where the records are? I am not interested in the corporation itself.

A. The records of the Berland should be in the hands of the Government; the Government should have the records of Berland.

Q. Why do you say that, Mr. Giglio?

A. I don't have them, have never seen them. The records of Berland Corporation—Berland Corporation was a corporation that was owned by David Lubben. When I became a partner with David Lubben the Berland Corporation was part of his company setup. I see here that you [fol. 2922] called me secretary-treasurer of that corporation. I think that's wrong. The only thing I have ever done in that corporation was to sign I believe a bank—you know, the application to be able to sign checks in the bank.

Q. Did you sign that as secretary-treasurer?

A. I may have. If you will look at the minute books which I will be glad to supply you with—but I haven't them.

Q. Did you bring them?

A. No, but I will send them in to you. I will send you any bills, invoices, and so forth, if you are interested. I will be glad to send them in.

Q. Will you through Mr. Cregan see that they are in my office on Monday morning at ten?

A. Yes, except I can't do it for Monday. Will Tuesday be all right?

Q. Yes. Tuesday will be satisfactory if it is agreeable to the jury.

A. I will have them in your office.

Q. That will make you whole insofar as the subpoenas that have been served.

A. No, I don't think that's completely so.

Q. What do you still retain?

A. I think you agreed with my attorney that on all the other things I would retain it would be personal and so forth. You now have all the corporations you are asking for here.

Q. There are certain things which you admittedly have not been able to find. I will withdraw that and rephrase it this way. So far as you know all the records which were in your possession and you have been able to find you have produced, is that so?

A. You have all the records under the subpoena, yes.

Q. With the Foreman's permission I am going to direct that if at some future time any of these records should [fol. 2923] inadvertently find their way into your possession, that you will then produce them to this grand jury?

A. I don't understand your "inadvertently".

Q. If you might, perchance, happen to find them in your possession.

A. Let me put it to you this way: If I should find any other records of any of these corporations that you have asked for, I will be very happy to cooperate with you and bring them in to you.

(Witness excused.)

[fol. 2924] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Present: Hon. Sylvester J. Ryan, U. S. D. J.

Docket Nos. C133-194 and 133-195

UNITED STATES OF AMERICA, Plaintiff,

—against—

WILLIAM GIGLIO, Defendant.

ORDER QUASHING SUBPOENA DUCES TECUM—
September 15, 1952

Upon reading and filing the notice of motion dated September 2, 1952, the affidavit of J. Gerard Cregan, Esq., duly verified the 8th day of September, 1952 in support thereof, and the informations previously filed in this Court, bearing the above docket numbers, and after hearing J. Gerard Cregan, Esq., for the said motion, and upon consent of the United States Attorney thereto, now on motion of J. Gerard Cregan, Esq., defendant's attorney, it is

[fol. 2925] ORDERED that the subpoena duces tecum heretofore issued in July of 1952 be and the same hereby is quashed as to the books, records and papers of the three partnerships recited in said subpoena, to wit: Loraine Food Company, Tavern Fruit Juice Company and Eatson Food Products Company, except as to those books and records of the foregoing three companies as he may have already produced.

Sylvester J. Ryan, U. S. D. J.

Consented to: Myles J. Lane, U. S. Atty., by Gerome J. Leone.

[fol. 2926] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

C 133-195
C 139-206
C 139-304
C 139-305
C 139-306
C 139-307
C 139-308

UNITED STATES OF AMERICA, Plaintiff,

—against—

HOWARD LAWN, LOUIS J. ROTH, WILLIAM J. GIGLIO and FRANK S. LIVORSI, Defendants,

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and six other actions.

Myles J. Lane, United States Attorney, for the Government, by Gerome J. Leone, Assistant United States Attorney.

[fol. 2927] Garey & Garey, Attorneys for Louis J. Roth, by Jacob J. Rosenblum, Wm. Francis Corson, Edward T. Perry.

Lloyd Paul Stryker, Attorney for William Giglio, Frank Livorsi, Howard Lawn, and American Brands Corporation, by Lloyd Paul Stryker, Harold W. Wolfram.

OPINION—March 27, 1953

GODDARD, *District Judge*:

Motion by defendants (1)—To dismiss the indictments and informations on constitutional grounds, (2)—To dismiss certain of the indictments for failure to state facts constituting an offense against the United States, (3)—For bills of particulars, and (4)—For orders requiring the

production of certain documents for inspection. The Government opposes these motions and moves to consolidate the several indictments.

Defendants Giglio, Livorsi, Lawn, and Roth allege the violation of their rights under the Fifth Amendment of the Constitution by requiring them to testify and produce records before the grand jury which filed the indictments.

In September, 1950, criminal informations were filed charging the individual defendants and American Brands Corporation with violation of Title 26 U. S. C. A. § 145(a) by wilfully causing American Brands to fail to pay its income tax for 1946, and also charging Giglio separately [fol. 2928] under the same section with failure to pay his own tax for 1946. At the time the informations were filed, investigation of the defendants was not complete and the informations were marked off the calendar on April 9, 1951.

Early in July, 1952, while the informations were still pending, Giglio, Livorsi, Lawn, and Roth were served with subpoenas duces tecum, addressed to them as individuals and not in any representative capacity, to appear before the grand jury "to testify and give evidence in regard to an alleged violation of Title 18, Section 371" and to produce all books and records of American Brands Corporation, seven other corporations, three partnerships, and one individual proprietorship. Giglio and Livorsi were partners in certain of the partnerships, and Giglio had been an officer of several of the corporations, which had been liquidated in 1949, including American Brands.

On July 14th and 15th, Roth, Livorsi, and Lawn appeared in response to the subpoenas and were sworn. Neither Roth, an accountant, nor Livorsi produced any records. Lawn produced four partnership papers in obedience to the subpoena. They were not warned of their privileges. Having announced that they had none of the records, other than those Lawn produced, they were questioned about the location of the records and, further, concerning their activities and connections with the various companies. None of them claimed the constitutional privilege against self-incrimination.

In response to the subpoena, Giglio appeared before the grand jury on July 15th, 16th, 23rd, and September 2nd, 3rd, 4th and 5th, 1952. He was sworn and not warned of his constitutional privilege. He was questioned about the location and production of all the records of the cor- [fol. 2929] porations and partnerships named in the subpoena. Early in his examination on the first day, he said he would be happy to produce them if he was given a little time to get them together, but later, during that hearing, he repeatedly objected and said he would like to claim whatever constitutional rights he had against self-incrimination and that some of the papers requested were personal records. The interrogation was continued and he was taken before a judge of this court and directed specifically to answer certain questions relating to the corporations. The next day, July 16th, on the return to the grand jury room, the attorney for the Government said to Giglio—"Yesterday morning, when you left here, the Grand Jury asked you to produce the books and records requested in the subpoena which was served upon you, *and you were directed to bring all matters, all books and records*, which were in this area, excluding the books and records which were in Chicago, is that correct?" [emphasis added] Answer—"That's correct." Question—"Have you now complied with that direction?" In reply Giglio said he had brought 30 large cartons containing records and would bring the rest later. In the interval between July 16th and the early part of September he had produced about 80 cartons of records, partnership as well as corporate records.

Shortly after, these indictments were filed charging various violations of the income tax laws, personally and in connection with the partnership and corporate returns. [A sealed indictment against Roth was filed on September 15th and opened on October 20th. The other indictments were filed on October 20th.]

The Government, in opposition to the motion to dismiss, asserts that it had the right to subpoena corporate records held in a representative capacity.

[fol. 2930] A custodian of corporate records held in a rep-

resentative capacity may be required to produce them for no privilege attaches to such records. *Wilson* v. *United States*, 221 U. S. 361; *Hale* v. *Henkel*, 201 U. S. 43; *United States* v. *White*, 322 U. S. 694. It is also true that he may be required to identify the records. *United States* v. *Austin-Bagley Corp.*, 31 F. (2nd) 229, C. C. A. 2, 1929; *Carolene Products Co.* v. *United States*, 140 F. (2nd) 61, C. C. A. 4, 1944; *United States* v. *Field*, 193 F. (2nd) 92, 2 Cir., 1951. However, as the court declared in *United States* v. *Daisart Sportswear, Inc.*, 169 F. (2nd) 856, 861, 2 Cir., 1948 [reversed on other grounds, 337 U. S. 49]: "Yet we do not believe that the principle of the Austin-Bagley case, supra, may be projected so that a corporate officer may be compelled to testify as to any and all phases of the corporation's activities, * * * ."

The doctrine of the absence of privilege of corporate officers is thus closely circumscribed, see *Healey* v. *United States*, 186 F. (2nd) 164, 9 Cir., 1950, and the Government, beyond requiring the production and identification of the corporate records, does not have an unbridled right to interrogate the corporate officer, without his constitutional privilege being available to him. Furthermore, the privilege against self-incrimination is available as to partnership records, for they are personal records. *In Re Subpoena Duces Tecum*, 81 F. Supp. 418; *United States* v. *Brasley*, 268 Fed. 59.

A mere witness may properly be subpoenaed to appear and testify before the grand jury, though he may not be compelled to incriminate himself. *Blair* v. *United States*, 250 U. S. 273; and he need not be warned of his privilege but to avail himself of it he must plead it whenever the [fol. 2931] answer to a question may incriminate. *United States* v. *Benjamin*, 120 F. (2nd) 521, C. C. A. 2, 1941; *United States* v. *Miller*, 80 F. Supp. 979.

However, upon the trial of the defendant in a criminal case, it would be a clear violation of a defendant's right against self-incrimination under the Fifth Amendment of the Constitution to compel him to take the stand, testify and produce his records, relating to the matter with which he is charged. Unless he volunteers, it would invalidate

the trial. *United States* v. *Housing Foundation of America, Inc.*, 176 F. (2nd) 665, 3 Cir., 1949. Title 18 U. S. C. A. § 3481 makes a defendant a competent witness *at his own request*. It is thus improper to call him as a witness without a request on his part. *8 Wigmore on Evidence*, 3rd Edit., p. 393; *3 Wharton's Criminal Evidence*, 11th Edit., p. 1960.

For similar reasons, an indictment is invalid if a defendant against whom a criminal information has been filed, is called by the prosecution as a witness before the grand jury to obtain evidence tending to sustain an indictment against him, which supersedes the earlier information. *Mulloney* v. *United States*, 79 F. (2nd) 566, C. C. A. 1, 1935; *United States* v. *Miller*, *supra*; *United States* v. *Kimball*, 117 Fed. 156. In neither situation is the defendant required to claim the privilege. The law grants him this protection. It is a right which he alone may waive.

The defendants did not waive their rights. Only if they were warned of and understood their rights, consented to waive them, and were willing to testify, could they be called as witnesses. In *United States* v. *Miller*, *supra*, the [fol. 2932] court declared: "Thus a defendant cannot by legal means be compelled to testify before a grand jury. This is so even though he fails to claim his constitutional privilege against self-incrimination, *unless he waives it after being properly warned of his privilege*." [Emphasis added.]

In the case at bar the defendants under criminal informations for tax violations previously filed, were subpoenaed in a grand jury investigation directly related thereto. They were questioned concerning matters which could incriminate them and partnership records were procured from them, without their being warned of their privilege, and thereafter the grand jury filed these indictments for tax violations, some of which indictments superseded the original informations, thereby substituting a felony charge for what was originally charged in the informations as a misdemeanor. The evidence obtained on the examinations of the defendants at least furnished a link in the chain of evidence needed to convict them for the crimes charged. In

Giglio's case, it was procured after he had pleaded his privilege. The constitutional rights of the defendants were thus clearly violated.

The Court has inherent power, in its discretion, to dismiss indictments obtained in violation of the rights of the defendants. It is also evident that such evidence as is obtained in violation of those rights may be ordered suppressed and returned. *In Re Fried*, 161 F. (2nd) 453, C. C. A. 2, 1947.

The defendants also ask that the informations filed against them in 1950 be dismissed. There is no allegation of impropriety in those proceedings. The motions to dismiss the informations are accordingly denied.

[fol. 2933] The motions to dismiss the indictments numbered 139-206, 139-304, 139-305, 139-306, 139-307, 139-308 filed against Giglio, Livorsi, Lawn, and Roth, are granted and the Government is directed to return, to the respective defendants, the partnership and personal records produced by them in response to the subpoenas.

As the indictments are dismissed, it is unnecessary to consider the other motions which are directed to the indictments.

March 27, 1953.

Henry Goddard, U. S. D. J.

[fol. 2934] In United States District Court for the Southern District of New York

C 133-195
C 139-206
C 139-304
C 139-305
C 139-306
C 139-307
C 139-308

Order Dismissing Indictments—April 29, 1953

The defendants Howard Lawn, Louis J. Roth, William J. Giglio and Frank S. Livorsi, having made respective motions before this Court for an order dismissing Informations C 133-194, C 133-195 and C 133-196, and Indictments C 139-206, C 139-304, C 139-305, C 139-306, C 139-307 and C 139-308 on the ground that the rights guaranteed to the said defendants by the Fifth Amendment to the Constitution of the United States had been violated,

Now, upon reading and filing the notice of motions, the affidavits of Howard Lawn, Louis J. Roth and Frank Livorsi, sworn to January 8, 1953; and the affidavit of William J. Giglio, sworn to January 7, 1953, all in support of said motion; and the affidavit of Gerome J. Leone, sworn to January 15, 1953; and the affidavit of Theodore Present, sworn to March 12, 1953, both in opposition to said motion, and this motion having duly come on to be heard on the 21st day of January 1953, and the Court having heard oral argument by Lloyd Paul Stryker, Esq., and Garey [fol. 2935] and Garey, by Jacob J. Rosenblum, Esq., of counsel, in support of said motion; and by Myles J. Lane, United States Attorney, Gerome J. Leone, Assistant United States Attorney, of counsel, in opposition thereto; and upon reading and filing the briefs filed by the respective parties; and upon reading the Grand Jury minutes, pages 1 to 9 relating to the examination on July 14, 1952 of Louis J. Roth; the Grand Jury minutes, pages 10 to 13, relating to

the examination on July 15, 1952 of Frank Livorsi; the Grand Jury Minutes, pages 14 to 22, relating to the examination on July 15, 1952 of Howard M. Lawn; the Grand Jury minutes, pages 23 to 53, relating to the examination on July 15, 1952 of William Giglio; the Grand Jury minutes, pages 54 to 55, relating to the examination on July 16, 1952 of William Giglio; the Grand Jury minutes, pages 58 to 60, relating to the examination on July 23, 1952 of William Giglio; the Grand Jury minutes, pages 136 to 145, relating to the examination on September 2, 1952 of William Giglio; the Grand Jury minutes, pages 146 to 149, relating to the examination on September 3, 1952 of William Giglio; the Grand Jury minutes, pages 150 to 155, relating to the examination on September 4, 1952 of William Giglio; the Grand Jury minutes, pages 156 to 161, relating to the examination on September 5, 1952 of William Giglio; and upon reading the stenographer's minutes of the hearing on July 15, 1952 before the Honorable T. Hoyt Davis, United States District Judge, "IN THE MATTER OF WILLIAM GIGLIO, a recalcitrant witness before the Grand Jury," and upon reading the stenographer's minutes of the hearing on September 3, 1952 before the Honorable Edward Weinfeld, United States District Judge, "IN THE MATTER OF WILLIAM J. GIGLIO, a witness before the Grand Jury," and an opinion having been filed on March 27, 1953, it is

[fol. 2936] ORDERED that the motions to dismiss the pending Informations C 133-194, C 133-195, and C 133-196, are hereby denied; and it is

FURTHER ORDERED that the motions to dismiss Indictments C 139-206, C 139-304, C 139-305, C 139-306, C 139-307 and C 139-308, are hereby granted, and it is

FURTHER ORDERED that the plaintiff United States of America return to the respective defendants any and all partnership and personal records produced by them in response to subpoena duces tecum served upon them in July, 1952.

Dated: New York, N. Y., April 29th, 1953.

Henry W. Goddard, U. S. D. J.

[fol. 2937] In United States District Court
Southern District of New York,

C 139-206
C 139-304
C 139-305
C 139-306
C 139-307
C 139-308

Notice of Appeal—May 5, 1953

Name of appellant:

United States of America.

Name and address of appellant's attorney:

J. Edward Lumbard, United States Attorney for the Southern District of New York, United States Court House, Foley Square, New York 7, N. Y.

Offense:

Attempted wilful evasion of personal and corporate income taxes (Title 26, Sec. 145(b), United States Code); wilful attempt to evade payment of personal and corporate income taxes (Title 26, Sec. 145(b), United States Code); false and fraudulent returns of partnerships and corporations in connection with income taxes (Sec. 3793(b)(1), Title 26, United States Code); and conspiracy to violate Sec. 145(b), Title 26 (Sec. 371, Title 18), United States Code.

[fol. 2938] Order:

Order of Honorable Henry W. Goddard, entered in the Southern District of New York on April 29, 1953, granting motions to dismiss indictments C 139-206, C 139-304, C 139-305, C 139-306, C 139-307 and C 139-308 as to defendants Howard Lawn, Louis J. Roth.

William Giglio and Frank Livorsi on the ground that the constitutional rights of the respective defendants had been violated.

The above named appellant hereby appeals to the United States Court of Appeals for the Second Circuit from the above stated order.

Dated: New York, N. Y., May 5, 1953.

J. Edward Lumbard, United States Attorney for the Southern District of New York, Attorney for Appellant.

[fol. 2939] In United States District Court
Southern District of New York,

C 139-206
C 139-304
C 139-305
C 139-306
C 139-307
C 139-308

Stipulation—May 29, 1953

It is hereby stipulated and agreed that the record on appeal in the above entitled matters shall consist of the following:

1. The docket entries relating to informations C 133-194, C 133-195 and C 133-196 and indictments C 139-206, C 139-304, C 139-305, C 139-306, C 139-307 and C 139-308.

2. Informations C 133-194, C 133-195 and C 133-196 and indictments C 139-206, C 139-304, C 139-305, C 139-306, C 139-307 and C 139-308.

3. Subpoenas duces tecum served on July 7 and 8, 1952 on the defendants Lawn, Giglio, Livorsi and Roth, respectively, and the Marshal's return.

4. Minutes relating to the appearances of Louis Roth, Frank Livorsi, Howard Lawn and William Giglio before the Grand Jury and transcripts of the hearings before Honorable T. Hoyt Davis on July 15, 1952 and before [fol. 2940] Honorable Edward Weinfeld on September 3, 1952. The aforesaid Grand Jury minutes are all of the minutes presented by the United States Attorney to, and considered by, Hon. Henry W. Goddard, United States District Judge in his determination dismissing the indictments herein.

5. Notice of motion dated September 2, 1952 on behalf of William Giglio to quash in part the subpoena duces tecum served on him, with supporting affidavit, and the order of Honorable Sylvester J. Ryan entered September 15, 1952.

6. Notices of motion to dismiss informations C 133-194, C 133-195 and C 133-196, and indictments C 139-206, C 139-304, C 139-305, C 139-306, C 139-307 and C 139-308, on the ground that the respective defendants had been deprived of the rights guaranteed to them by the Fifth Amendment; the affidavits of the respective parties in support thereof, the affidavit of Gerome J. Leone in opposition thereto, the affidavit of Revenue Agent Theodore Present in opposition thereto and exhibits thereto annexed consisting of nine photostatic pages.

7. Memorandum opinion of Honorable Henry W. Goddard, United States District Judge, filed February 27, 1953.

8. Stenographic minutes of hearings before Honorable Henry W. Goddard on January 21, March 3, March 6 and March 31, 1953.

9. Opinion of Honorable Henry W. Goddard filed March 27, 1953.

[fol. 2941] 10. Order of Honorable Henry W. Goddard dismissing the indictments entered April 30, 1953.

11. Notice of appeal.

12. This Stipulation.

IT IS FURTHER STIPULATED AND AGREED:

1. That these items of the record contain all matter necessary fairly to present appellant's points and such points as are relevant in reply.

2. That in so far as these items purport to contain the stenographic minutes of proceedings, the minutes are set forth accurately.

3. That all necessary exhibits are included in the record.

4. That these items constitute all matters required to be set forth by applicable rules.

In reliance upon these representations IT IS HEREBY STIPULATED AND AGREED by the undersigned that the foregoing is a true copy of the transcript of record of the District Court for the Southern District of New York in the above entitled matter as agreed on by the parties.

[fol. 2942] Dated: New York, N. Y., May 29, 1953.

J. Edward Lumbard, United States Attorney for the Southern District of New York, Attorney for Plaintiff-Appellant, United States Court House, Foley Square, New York 7, N. Y.

Lloyd Paul Stryker, Attorney for Defendants-Appellees, Giglio, Livorsi and Lawn, 40 Wall Street, New York, N. Y.

Jacob J. Rosenbloom, Garey & Garey, Attorneys for Defendant-Appellee, Roth, 63 Wall Street, New York, N. Y.

[fol. 2943] [Clerk's Certificate to foregoing transcript omitted in printing.]

[fol. 2945] **APPENDIX TO BRIEF FOR UNITED STATES FOR WILLIAM GIGLIO, FRANK LIVORSI, HOWARD LAWN AND AMERICAN BRANDS CORPORATION**

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

C. 142-72

UNITED STATES OF AMERICA,

vs.

WILLIAM GIGLIO, FRANK LIVORSI, HOWARD LAWN and AMERICAN BRANDS CORPORATION.

TRANSCRIPT OF TRIAL

Before: HON. LAWRENCE E. WALSH, D. J., and a Jury.

New York, N. Y., January 10, 1955,
10.30 o'clock a.m.

APPEARANCES:

J. Edward Lumbard, Esq., United States Attorney, for the Government; by Milton R. Wessel, Esq., Arnold G. Fraiman, Esq., Assistant United States Attorneys, and Ira L. Tilzer, Esq., Tax Attorney, Internal Revenue Service.

Lloyd Paul Stryker, Esq., and Harold W. Wolfram, Esq., Attorneys for Defendants.

[fol. 2946] COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Wessel: Briefly, your Honor, that affidavit, the series of affidavits the Government has just handed up, relate to assurances by the Government that what the Government said it would do with regard to certain documents has been done and will continue to be done.

Briefly, at an earlier time, Judge Goddard held that certain records had been produced in violation of the defense of constitutional rights, and I and everyone work-

ing on the case in September 1954 assured the court that no such documents had been used or would be used, and I am again restating those assurances for myself and every one who has participated in any way in the case.

* * * * * * *

Mr. Stryker: August, so none of these delays I am attributing to Mr. Wessel, and I think it is only fair to say to you as I will say to this jury that my very serious bitter complaint against the illegal, unconscionable and unfair treatment that these men had is not directed in any way whatever against Mr. Wessel, nor to his distinguished chief, Judge Lumbard, an old and valued friend of mine.

Let me make that clear once and for all. I will be using the words United States Attorney and assistant United States attorney. My attack is not on them. Let me make that clear.

All right. Now, then, on September 9th this motion came on before Judge Palmieri.

Mr. Wessel: May I interrupt for just a moment, Mr. Stryker, to refer to something which is not with respect to your motion but merely with respect to your state-
[fol. 2947] ment as to your intentions to tell the jury, I take it, the prior background of this case in so far as constitutional problems and motions are concerned.

I think I should state right now that if comments of that kind are to be made to the jury, which are not evidence in any sense of the word, and which are strictly questions of law for the Judge's charge, I shall be forced to object.

Mr. Stryker: Of course I am a little too old to think that I have asked jurors to decide questions of law, but this case, the cross examination of facts back and forth inevitably are interwoven with what was done before, what the witnesses did, and so forth, so I will not ask the jury to decide that as a question of law, of course, but I am going to tell the jury what I intend to prove.

* * * * * * *

Mr. Wessel: If your Honor please, I will be just a moment with this one application, and with regard to one of the things Mr. Stryker said, I have read his excellent book,

and I noted that he referred to one case in which an application by him to dismiss an indictment on the grounds of voluntary disclosure was denied by the court, and he went to trial and before the jury he kept commenting on the Government's improper tactics with regard to voluntary disclosure, in an attempt to get the jury to in effect reverse the court. Now I think it would be improper in this case if any reference were made to the prior proceedings, whereby the Government obtained evidence, before the jury. It is not part of this case.

Mr. Stryker: I think that is not quite correct. It is true that although I tried the voluntary disclosure case [fol. 2948] for about five weeks here, Judge Kennedy finally told me that he was going to charge the jury there wasn't any voluntary disclosure, and I think if you will read the book more accurately you will find that I did not trespass on any rule of the court, but I told the jury what the facts were.

Mr. Wessel: That is what I am referring to, Mr. Stryker.

Mr. Wolfram: Well, Judge Kennedy ruled there was an issue in the case on the question of intent, definitely.

The Court: Whose intent?

Mr. Wolfram: Defendant's intent, because at the time they filed one of the tax returns they were in the process of making a voluntary disclosure, and Judge Kennedy said it would bear on their intent to file a return when they were making this disclosure.

Mr. Wessel: That would be true in this case. The Government's tactics, if they are improper, with regard to serving subpoenas duces tecum, have nothing to do with the crimes charged

Mr. Stryker: It has a great deal to do with some of your witnesses.

The Court: As I see the picture now, and I don't know what the witnesses will testify to or who will be the witnesses, the facts relating to the conduct of proceedings before the grand jury and to the conduct of counsel with respect to any of these motions are not properly before the jury. I mean, those are all matters which some member of this court has ruled on, and which I have very recently ruled on, and to that extent I don't think they should go before this jury.

In so far as what happened before Judge Goddard, I don't think that should, either. I mean, the indictments were faulty and Judge Goddard struck them down, and [fol. 2949] that is the end of that. Those are all matters of law, and I don't see that that should come in here to confuse what may be difficult enough and complex enough facts for this jury to understand.

Mr. Stryker: Well, if your Honor please, I don't think you want to pass on that in advance.

The Court: I think it might be helpful, Mr. Stryker, not to interrupt you, if my general views were known now.

Mr. Stryker: I am glad to know them.

The Court: So that we may measure what we do against them.

Mr. Stryker: In any case, not of course to reargue, and heaven knows I don't want to reargue Judge Goddard's decision, what has happened, the history of the case, is always an element.

The Court: I don't think so, Mr. Stryker.

Mr. Stryker: (Continuing) And it is an element particularly when my contention is that basically and fundamentally these defendants have been misused.

The Court: Well, the question of misuse is something which has been raised before this court, and several members of this court have held in one way or another that they have not been misused, and Judge Goddard found they were misused in one situation and he promptly remedied it, and I think that is the end of it. They have no continuing grievance. They were justly treated in that proceeding.

Mr. Stryker: Well, if your Honor please, let me say this, that if the Government doesn't call Mr. Leone, and the case gets as far as that, I want to call him, and the evidence that I want to adduce is what happened, and I want to show the bad faith of that prosecution, at least [fol. 2950] when it was in his hands, and I will. I wish I could put my finger right on it, but maybe you can. That question of good or bad faith of a lawsuit is always a relevant inquiry, according to Mr. Wigmore, to whom I bow very low along with the rest of us. So I can't—this whole question revolves around what happened, what these

agents did, and I can't—I simply—I cannot acquiesce in the view that I am not going to be allowed to bring before this jury what I regard is the bad faith of this prosecution, and again I exclude of course the present company.

Mr. Wessel: Your Honor, I must immediately state and press this very highly, your Honor, that references of this kind to Mr. Leone are ex parte, as they are without Mr. Leone having a chance to answer them, and should not in any way be publicized. The man is a member of the bar; he has a fine reputation——

Mr. Stryker: I join in that. I am not saying this for the press. It is for you.

Mr. Wessel: He cannot answer Mr. Stryker, he cannot be here and hear such comments made about him.

The Court: On the question of law, I think the bad faith of a prosecution is a proper matter for cross-examination and defense, but I mean matters of how the United States Attorney will or will not stand on particulars or such matters, on that I don't regard—I mean, it seems to me that is something the court has assumed responsibility for, and not the United States Attorney.

Mr. Stryker: You don't have to tell me that. In other words, the history of this case, yes, whether you granted or denied a bill of particulars, of course I am not going to be precluded from telling the jury, and fortunately, I don't know what this is, but I have been told you are not going to hold me down.

[fol. 2951] Mr. Wessel: There has been no constitutional violation in regard to this indictment, in so far as the court found, and for Mr. Stryker to suggest that any constitutional rights have in any way been infringed, would be improper.

The Court: He is not going to suggest that. He is going to suggest that the facts here have been subverted by the person who handled this proceeding with bias.

Mr. Stryker: That is it.

The Court: That is a different problem.

Mr. Stryker: It will be all through this case, and I don't intend to be precluded if I can help it from that.

Now, as far as what you said about telling the jury that I made a motion for a bill of particulars here, and I didn't get it all, of course I won't do that.

The Court: Well, you work from the indictment and not from any of the preliminary pretrial motions, and I think we will probably come out all right I would say.

Mr. Stryker: I don't quite understand that.

The Court: In other words, to say that reading count 7, you don't know how to defend against it, I think that is one thing, but to say you can't defend against it because the United States Attorney wouldn't give you the particulars, I think that is perhaps driving—in other words, I don't think the denial of particulars can in any sense be linked together with your claim of bias or subversion of facts. The two shouldn't be confused. The United States Attorney is taking the position as a matter of law on which it has been sustained by the court.

Mr. Stryker: Maybe he can agree with that. It is enough for me that I don't know what I am being charged with.

[fol. 2952] The Court: All right, let's see how far we can get along with on such vague understandings.

* * * * * * * *

OPENING STATEMENT ON BEHALF OF GOVERNMENT

Mr. Wessel: May it please the Court, Mr. Stryker, Mr. Foreman, Members of the Jury:

At this time in every criminal prosecution, the Government is given an opportunity to make an opening statement to the jury. The purpose of that opening statement, almost like a program for a theatrical production, is to explain what the evidence in the case will show, what the case is all about. The statement is no evidence in any sense of the word and nothing that I say or that Mr. Stryker says, or that any lawyer says in this case is evidence. Your decision in this case will be based upon the evidence you hear from witnesses and documents which the witnesses will introduce into evidence.

This opening statement is also not argument. If I do argue, it is unintentional. I am trying to set forth the facts as coldly as possible, so that you will be able to understand later on, when you hear different bits and pieces of evidence, how those all fit into the broad pattern of this case.

Now I think at the very outset, the Government should make reference to certain all-important constitutional privileges and principles which govern in this case.

In the first place, these defendants, who are sitting two at the counsel table and one behind, are presumed to be innocent, and that presumption of innocence which is one of the very basic constitutional principles in the American Government, that presumption of innocence lasts [fol. 2953] not only throughout the trial of this case, but right through your deliberations in the jury room, and up until, if you do, up until you find them guilty beyond a reasonable doubt. In other words, they are presumed innocent, and you cannot find them guilty until you do so beyond a reasonable doubt.

Now, those are principles of law. I should say that the law in this case will be given to you by the judge, Judge Walsh, at the end of the case. What I say the law is or what Mr. Stryker says the law is or what anybody says the law is I am sure we will try to be correct about it, but in the end it is what Judge Walsh says the law is in his charge to you that will finally determine the law. You must take the law from him. The facts you will take from the witnesses as you see them on that witness stand, and from the documents that you see those witnesses introduce into evidence.

Now there will be, I believe, a good many witnesses in this case. Some of them will be experts and will discuss technical subjects; most will not be. Although this is generally referred to as an income tax case, unlike most income tax cases there are not going to be a great many documents.

The reason for that is because the Government charges, and it will prove, that these defendants destroyed a good bit of the documents which would incriminate them, and therefore most of what you hear will be from live witnesses on that stand.

Now what they say I am sure you will listen to carefully and understand. Most important, it is your function as the jury to listen very carefully, to watch the witness, to see how he looks at me or at you, to watch how he holds his hands, to watch all of the things which will

[fol. 2954] finally, in your mind, make you decide whether that witness is truthful, whether his observation is good, whether his recollection is good, and all the other things which make up your final determination of whether that witness is an honest person and is stating facts which you should believe.

In the end it will be your conclusion of what that witness and the other witnesses have said in this case and what their evidence is that will determine whether these defendants are or are not guilty.

I should say, as part of the constitutional privilege these defendants have, the constitutional protection they are given with regard to being found guilty beyond a reasonable doubt before they can be convicted, that they are under no obligation of any kind to present any evidence in this case. The burden is solely and strictly upon the Government, and, of course, the Government must and does accept that burden.

Our function, the Government's function, the men at this table, and who have worked on this case, it is our function to present facts to you, and for you to decide on the basis of those facts, and whatever else is presented to you in this case, whether the defendants are or are not guilty.

Now there is one other general principle which I must state before I explain what this case is about.

His Honor, Judge Walsh, has referred to the indictment in this case, and I am going to very shortly read from that indictment. It is most important that you understand that this indictment, like the opening statement, is not evidence in any sense of the word. The indictment is merely a piece of paper, a legal piece of paper which results from a grand jury having found certain facts, and [fol. 2955] which explains to the Court, to defense counsel, to the defendants, to the jury, to the Government, exactly what the case is about. We are bound by this indictment.

This indictment, in other words, says, this is the issue which is going to be tried in this case. The indictment is not evidence, and you cannot presume anything from it or understand anything from it, except that it limits what the case is. It just says that we can't go talking

about something other than is covered in the indictment.

Now the indictment is in ten counts. A count is a separate and distinct crime. In other words, ten crimes are involved in this case. Nine of those crimes are crimes under the Internal Revenue laws, and I will refer to them first merely because in the order of the indictment they are the first nine counts.

The tenth count is not a crime under the Internal Revenue laws at all. It is a crime under the general Criminal Code. It is the so-called conspiracy crime, and it is that tenth count which is probably basic to this case, the tenth conspiracy count, which in effect charges a conspiracy on the part of four persons, three of whom you see here, to evade or to violate the laws of the United States.

Now, again, in referring to this indictment I must say this at the outset also: You will hear referred to the three men sitting across from you, Mr. Giglio on the left, Mr. Lawn and Mr. Livorsi, and you will also hear referred to one Louis J. Roth.

I will explain how Louis J. Roth fits into this picture, but first I must say—and this is another important principle which you must remember—that Mr. Roth is named in this indictment, but he has pleaded guilty. His plea [fol. 2956] of guilty cannot in any way be used by you as evidence against him or anybody else. It is strictly, as the indictment itself, a technical thing. It removes him from this case. He is not on trial here. He must be referred to because he is named as one of the co-conspirators, and he is named in the indictment, and his acts will, as the evidence unfolds, be important in your consideration of the guilt of the other defendants. But his plea of guilty cannot be considered by you in any way as evidence against these defendants or against anybody else.

Now, with that, if I may, I would like to read from the indictment, because this indictment is what the Government will prove. It is the shortest way, the simplest way, the clearest and the most accurate way that I know of to explain to the jury what the evidence, which unfolds during this trial, will show.

Count 1—and I should say I will abbreviate from time to time; there will be a good many figures referred to in this indictment and I may say a hundred fifty-odd thousand when in fact is $150,220. I do so because the particular penny is not important at this time, and because, like myself, I am sure you will forget those details until they come up in the course of the evidence.

So if I abbreviate, it is not to be inaccurate, it is merely to hasten this proceeding.

Count 1: The grand jury charges—and this is what the Government will prove—that on or about the 12th day of September, 1947, at the Southern District of New York, William Giglio, and Louis J. Roth, the defendants, in connection with a matter arising under the Internal Revenue laws, did unlawfully, wilfully and knowingly aid, assist in, procure, counsel and advise the preparation and presentation of a false and fraudulent return, to wit, [fol. 2957] a partnership return of income of the Eatsum Food Products Co., Ltd. for the fiscal year beginning June 1, 1945, and ending May 31, 1946.

Now, that is what the Government will prove, but perhaps I can summarize it a little better than the technical words of the indictment. This count charges that two of the defendants, Giglio and Roth, filed a false partnership information return for a fiscal period.

Now a fiscal period is a technical term which means a 12-month period other than a calendar year. It means, let us say, from February 1st to January 31st, because many businesses, and some individuals, like to operate, for various and usually good reasons, on a fiscal year basis for a lot of reasons.

This refers to a fiscal year ending in 1946, and you will find as I read through the indictment that all of the counts, all of the first nine counts, not the conspiracy count, all of the first nine counts refer to taxes for the calendar year or a fiscal year ending in 1946, and that suggests something.

It is eight years ago, almost nine years ago. Necessarily the recollection of many witnesses will be faulty with regard to what happened at that time. It is going to be a very difficult job, but it is your job, and only the jury's job, to deter-

mine whether a witness who says something happened in 1946 is correct or whether perhaps events have taken place in 1947 or 1948 or 1953 or 1954 or even 1955 which make him think those things happened in 1946 but they didn't.

Now, there is no way that I know of that you can tell whether a witness knows what he says is true or doesn't. There is no way that I know of. You have to evaluate the witness as you would any human being with whom you [fol. 2958] deal, based on your own understanding and analysis of that person.

But it is going to be difficult, and it is something which you must at all times bear in mind as a most important function of the jury.

Now this refers to the filing of a partnership return, and it is important to understand what a partnership return is. It is not the kind of tax return which most people know about. It doesn't say we owe any taxes at all. A partnership return is usually called an information return. It merely says, we, John Jones, Mary Smith and all made the following amounts of money during this year, and it was distributed among the various partners in this way. It is for the information of the Government, because the Government, using that partnership return, can then go to the individual partners and say, look, this says you earned $100,000, or $10,000, or $200. Where is it in your income tax return?

It is most important to understand that this count, count 1, and count 2 which follows, relate only to the filing of an information return and not to any tax evasion at all. It refers to the preparation and presentation of a false and fraudulent return, not to tax evasion. There isn't a word said about anybody evading taxes.

Now, that is important, because tax evasion comes in connection with later counts, and different principles and different evidence and different law will govern with regard to tax evasion.

Most important—and this will be true in every count of the indictment, and it is, I suppose, the most important element, not only in this, but in any criminal prosecution—most important are the words "unlawfully, wilfully and knowingly."

[fol. 2959] Now that is the difference between an honest mistake and one which is a dishonest mistake.

I suppose everybody who files a tax return may make a mistake of one kind or another. The difference between that and this is in the words "unlawfully, wilfully and knowingly." That is, that these persons prepared and filed a false information return, knowing it was false. There isn't any question about that. And that is the ultimate issue in this case on count 1, and it will be the ultimate issue in every count; that is, did these people know that what they were doing was wrong.

In that connection, I should refer right now to these four persons, so that you can understand them a little bit. There is a company involved also, American Brands Corporation, that is also on trial, but I want to refer to the individuals, because it is the working of the minds of the individuals and their knowledge and their intent which is most important throughout.

William Giglio and Frank Livorsi were partners in this Eatsum Food Products Company, which is referred to in the first count, and they were partners in the company referred to in the second count, and they were partners in lots of other companies, and all that will be brought out through the evidence, of course.

They are the ones who finally got the money.

Howard Lawn, who sits at counsel table, is a lawyer. He is a high honor graduate of Harvard College. The evidence will show that he graduated from Harvard Law School, and after graduating and entering private practice, he subsequently became the chief criminal enforcement officer for the United States Government in the District of New Jersey. He was head of the Criminal Division of the United States Attorney's office in the District of New Jersey. That is his background.

[fol. 2960] Louis J. Roth, who is not on trial here, who has pleaded guilty, and that plea cannot be taken in any way by you against anybody, but it is important that he is one of the persons who worked on these various facts, Louis J. Roth is an accountant of, I think, almost 30 years' experience.

So they had the two partners, the two men who worked together, who reaped the substantial part of the benefits, the lawyer and the accountant.

That is how these four persons fit in to what I will later refer to as the overall conspiracy referred to in count 10 of the indictment.

Now, there are a number of other things about count 1. I will be more brief on the other counts, because I am covering some of the general principles on this count. Count 1 also refers to "at the Southern District of New York."

Now, that means that these defendants did something within this district. The Southern District of New York includes Manhattan, and various other counties.

The important part, and the reason that is in the indictment, is because in order for this court to have jurisdiction the acts referred to must have taken place in this district; and it is an important part. It may sound technical, but it is an important part of this trial, that as part of your findings that you find that what these defendants did, they did do in the Southern District of New York.

Now, the first words, "on or about the 12th day of September, 1947," at the moment they seem somewhat unimportant. As I go through the indictment you will see that the dates referred to in the middle of September, 1947, are all important.

As the evidence unfolds in this case, you will see, and I will later refer to in the opening, a most remarkable [fol. 2961] series of events, transactions, conversations, occurrences in the middle of September, 1947. I want you particularly to pay attention to the evidence, because you will hear one witness say, "This happened on September 16th," but he may not associate it with anything else. You will hear somebody else say, "This happened September 14th," but he won't know that that fits in.

At the end you will see that this remarkable series of events, in the middle of September, 1947, all refer to and relate directly to the filing of a tremendous number of income tax returns, and a broad, overall conspiracy to evade taxes, which all culminated in the middle of September, 1947.

So I want you to pay, if you can, particular attention to the events that take place around that time.

Count 2: The grand jury further charges, and this is what the Government will prove, that on or about the 12th day of September, 1947, at the Southern District of New York, William Giglio and Louis J. Roth, the defendants, in connection with a matter arising under the Internal Revenue laws, did unlawfully, wilfully and knowingly—the same crucial words of intent—aid, assist in, procure, counsel and advise the preparation and presentation of a false and fraudulent return, to wit, a partnership return of income of the Tavern Fruit Juice Company for the period beginning April 16, 1954, and ending March 31, 1946.

Now that—and that is what the Government will prove—is the same kind of thing with regard to a different partnership, but it was the same partners and the same four persons; only Giglio and Roth are named as defendants in that count.

Count 3 is the first count which refers to tax evasion [fol. 2962] as distinguished from filing of false and fraudulent documents. It is a long count, and I will break it up, if I can, just a little to help explain it.

The grand jury further charges—and this is what the Government will prove through evidence in this trial—, that on or about the 15th day of September, 1947, at the Southern District of New York, William Giglio and Louis J. Roth, the defendants, did wilfully and knowingly attempt to defeat and evade a large part of the income taxes due and owing to the United States of America.

And now we come to a different kind of crime: And wilfully and knowingly attempt to defeat and evade a large part of the income taxes due and owing to the United States of America, by American Brands Corporation, which I will refer to hereafter as ABC, American Brands Wholesale Corporation, and I will refer to that hereafter as Wholesale, and American Trucking & Forwarding Corporation, and I will refer to that as Trucking, for the calendar year 1946, by filing and causing to be filed with the Collector of Internal Revenue for the Third Collection District of New York—which is now known as the Upper

Manhattan District on 45th Street—a false and fraudulent consolidated corporation income tax return, within the provisions of Section 141, Title 26, United States Code, in the name of ABC—that is the consolidated corporation return for American Brands Corporation—in which ABC, Wholesale, Trucking, another company, American Sweets Corporation, which I will refer to as Sweets, and American Agar Corporation, which I will refer to as Agar, were listed as an affiliated group of corporations, and in which return the defendants stated that the net income of American Brands Corporation and its affiliated group of corporations was $261,000-odd, and that the tax due and owing [fol. 2963] thereon was the sum of $4,000-odd, whereas, as the defendants then and there well knew—again we come to that crucial intent—ABC, Wholesale, Trucking, Sweets and Agar, were not an affiliated group of corporations within the provisions of Section 141, Title 26, United States Code, and the net income of ABC for the said calendar year was the sum of $279,000-odd, upon which said net income ABC owed to the United States of America an income tax of $106,000-odd, and the net income of Wholesale for the said calendar year was the sum of $169,000-odd, upon which said net income it owed to the United States an income tax of $64,000-odd, and the net income of Trucking for the said calendar year was the sum of $3,000-odd, upon which said net income Trucking owed to the United States an income tax of $667.

Now, what does all that mean?

If I may explain—and first I will be technical, but there is nothing at all technical about this; it is simple as ABC, American Brands Corporation.

These defendants had a number of companies. I have mentioned some of them. There are others, but the ones in count 3 I have named. Those companies, some had gains and some had losses.

Now I think you all know that if General Motors makes a certain amount of money and Ford loses money, they can't put the two together and say, "My goodness, overall we didn't make any money." Well, these defendants did just that. Knowing that they were not entitled to add the various companies together and balance losses against

gains, they did so anyway. They did so quite some time after the end of the year for which the business was operating. In other words, the year in which these companies operated, and which is charged in the indictment, is 1946. [fol. 2964] In September, 1947, they filed a tax return saying that in 1946 these companies were consolidated and therefore could set off losses against gains, and they decided that they would do that by going back, by destroying and changing the books of the companies, even though it was now a year and a half after the things had happened, and by filing a return which showed the proper relationship under the law.

All you have got to watch out for is talk about changing the records, destroying the records, falsely stating in the return that these companies were owned by each other, when in fact they were not owned by each other.

It is as simple as that. It doesn't require any understanding or knowledge of Section 141 of Title 26.

Count 4—and this does not refer to tax evasion like count 3 does, it refers to the filing of a false return for this consolidated group of companies.

The grand jury further charges—and this is what the evidence will show—that on or about the 15th day of September, 1947, at the Southern District of New York, William Giglio and Louis J. Roth, the defendants, in connection with a matter arising under the Internal Revenue laws, did wilfully, unlawfully and knowingly aid, assist in, procure, counsel and advise the preparation and presentation of a false and fraudulent return, to wit, a consolidated corporation income tax return in the name of America Brands Corporation for the calendar year 1946.

That does not refer to tax evasion, it refers to the filing of a false and fraudulent return. It differs from the count before, which referred to the actual evasion of income taxes.

[fol. 2965] Count 5—and now we come down to what perhaps you have been waiting for, what the individuals did, where their money was.

The grand jury further charges—and this is what the evidence will show—that on or about the 15th day of September, 1947, at the Southern District of New York,

William Giglio and Louis J. Roth, the defendants, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by William Giglio to the United States of America for the calendar year 1946 by filing and causing to be filed with the Collector of Internal Revenue for the Third Collection District of New York a false and fraudulent income tax return, wherein they stated that the net income of William Giglio for 1946 was the sum of $286,000-odd, and that the amount of tax due and owing thereon was the sum of $232,000-odd, whereas they then and there well knew the net income of William Giglio for the said calendar year 1946 was the sum of approximately $492,190.77. I want to repeat that figure: William Giglio's net income for 1946 was the sum of approximately $429,190.77, upon which said net income William Giglio owed to the United States of America an income tax of approximately $344,520.92. I think that speaks for itself.

Count 6: The grand jury further charges that on or about the 15th day of September, 1947, at the Southern District of New York, Frank Livorsi and Louis J. Roth, the defendants, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by Frank Livorsi to the United States of America for the calendar year 1946 by filing and causing to be filed with the Collector of Internal Revenue for the Third Collection District of New York a false and fraudulent [fol. 2966] income tax return, wherein they stated that the net income of Frank Livorsi for the said calendar year was the sum of $289,000, and that the amount of tax due and owing thereon was the sum of $263,000, whereas, as they then and there well knew, the net income of Frank Livorsi for the said calendar year was the sum of approximately $432,015.75, upon which said net income Frank Livorsi owed to the United States of America an income tax of approximately $347,395.36. That also speaks for itself, I think.

Count 7—this, again, is somewhat different from the first six counts, and I think I should explain it for a moment:

You saw in count 5 that William Giglio filed a tax return, where he said his income was $286,000, and the Government charges that he actually earned $429,000. In other words, he evaded $140,000 in taxes. What happened to that $286,000 that he said he owed? Count 7 shows that he paid peanuts for that. He paid his estimated taxes in advance, about $8,000, but of the $286,000 that he said he owed, he paid nothing, except for that estimated amount of about $8,000, and when the Government, when he knew the Government was coming around, he hid his assets, concealed them, got rid of everything he had so nobody would find it.

I will read it with that background: The grand jury further charges—and this is what the evidence will develop—from on or about the 1st day of September, 1947, and up to and including the date of the filing of this indictment, at the Southern District of New York and elsewhere, William Giglio, Howard Lawn and Louis J. Roth, the defendants, an income tax return for the calendar year 1946 for said William Giglio having been filed, [fol. 2967] stating the net income of said William Giglio for said calendar year to be the sum of $286,000 and the amount of tax due and owing thereon to be the sum of $232,000, did wilfully and knowingly—wilfully and knowingly—attempt to defeat and evade the payment of a large part of the taxes due and owing by William Giglio to the United States of America for the calendar year 1946 in that they did conceal the assets of William Giglio.

Now I think I ought to stop for a moment. There are two general kinds of evasion involved in this case. One is the kind of evasion where you just don't tell the Government you made any money; you keep it; you hide it; you just say, "I didn't have that income. My business didn't make that money. I didn't earn it." That is tax evasion.

The second kind is where you say you earned money, but you decide, "I am just not going to pay the Government. Why should I pay them? I can use the money myself." And so you sell your home, and you close up your bank accounts, and you take the money and you put it underneath your mattress, or you do almost anything

else that a person might do to conceal assets. That is evading the payment of taxes.

The first was evading taxes themselves; the second evading the payment of taxes.

And when I come to count 10, which is the overall, broad conspiracy count, you will see how this case breaks down very simply and very easily into those two heads of the conspiracy: evading taxes, to the greatest extent possible; but sometimes you just cannot help but report something, and so we evade the payment of taxes, because you don't want to pay that anyway.

Count 8: The grand jury further charges—and the evi- [fol. 2968] dence will develop—from on or about the 1st day of September, 1947, and up to and including the date of the filing of this indictment, at the Southern District of New York, and elsewhere, Frank Livorsi, the defendant, having filed an income tax return for the said calendar year 1946, stating the net income of Frank Livorsi for the said calendar year to be the sum of $289,000, and the amount of tax due and owing thereon to be the sum of $236,000, did wilfully and knowingly attempt to defeat and evade the payment of a large part of the tax due and owing by him to the United States of America for the calendar year 1946 in that he did conceal his assets.

Count 9: The grand jury further charges—and this is again what the evidence will show—from on or about the first day of January, 1946, and up to and including the date of the filing of this indictment, at the Southern District of New York, William Giglio, Frank Livorsi, Howard Lawn and Louis J. Roth, the defendants, did wilfully and knowingly attempt to defeat and evade the payment of a large part of the taxes due and owing by American Brands Corporation for the calendar year 1946 in that they did misappropriate, convert and divert assets of the aforementioned corporations to their own use and benefit.

Those are the first nine counts. Those are what, in the law, are often called substantive counts.

Now I come to count 10, the conspiracy count. It is not under the Internal Revenue laws at all. It is under Title 19, Section 371, which is the general crime title; not Internal Revenue at all. It charges that the defen-

dants did conspire to violate the laws of the United States Government.

I will read it and then I would like to explain it.

[fol. 2969] The grand jury further charges:

1. From on or about the 1st day of July, 1945, and continuously thereafter up to and including the date of the filing of this indictment—which was in July of 1953—at the Southern District of New York, William Giglio, Frank Livorsi, Howard Lawn, Louis J. Roth, and American Brands Corporation—that is all five of the defendants—the defendants, did wilfully and knowingly—wilfully and knowingly—combine, conspire, confederate and agree, together and with each other, and with diverse other persons to the grand jurors unknown, to commit an offense against the United States of America, to wit, to violate the provisions of Section 145B, Title 26, United States Code.

2. It was a part of the said conspiracy that the defendants would defeat and evade a large part of the taxes due and owing by the said defendants, individually, and by ABC, Wholesale and Trucking.

3. It was further a part of the said conspiracy that the defendants would defeat and evade the payment of a large part of the taxes due and owing by said defendants, individually, and by ABC, Wholesale and Trucking.

The difference between those two paragraphs is what I said before: paragraph 2, it was a part of the conspiracy that they would defeat and evade taxes; 3, it was a part of the conspiracy that they would defeat and evade the payment of taxes.

4. It was further a part of the said conspiracy that the defendants would organize and cause to be organized ABC, Wholesale, Trucking, Agar and Sweets.

[fol. 2970] 5. It was further a part of the said conspiracy that the defendants would file and cause the filing of delinquent income tax returns long after the due date for the filing of said returns, for said defendants individually, and for ABC, Wholesale, Trucking, Agar and Sweets.

Now, that is filing late returns, and let's see if we can tie that into the earlier counts for just a moment, because this is the kind of thing which must be done during the

course of this case in order to understand all elements of the conspiracy.

Count 1 refers to the filing of a false partnership return for Eatsum Food Products Company in September, 1947. It was for a fiscal year ending May 31, 1946. That partnership return was due to be filed two and a half months after May 31, 1946. It is June, July, August 15, 1946. It wasn't filed until September 15, 1947, and you will find that all these returns were filed September 15, 1947, after, long after they were due, and, more than that, after the defendants had gotten rid of all their assets so that when they were filed, the Government couldn't find a penny. That is what that paragraph in the conspiracy count refers to, the filing of these late returns as part of the conspiracy to defeat and evade taxes and the payment of taxes.

6. It was further a part of said conspiracy that the defendants would cause American Brands Corporation to fail to withhold taxes on salaries or wages paid to these defendants.

7. It was further a part of the said conspiracy that the defendants would misappropriate, convert and divert assets of the aforesaid corporations.

[fol. 2971] 8. It was further a part of the said conspiracy that the defendants would falsify, destroy and fail to keep and preserve books and records of the operations of the aforesaid corporations, and of Eatsum Food Products Co., Ltd. and Tavern Fruit Juice Company. An essential part of the conspiracy, you can't keep books around if you are trying to violate the laws, not if they are honest books.

9. It was further a part of the said conspiracy that the defendants would cause a consolidated corporation income tax return in the name of American Brands Corporation to be filed with the Collector of Internal Revenue for the Third Collection District of New York.

10. It was further a part of the said conspiracy that the defendants would file and cause to be filed false and fraudulent income tax returns for the said defendants individually, and for ABC, Wholesale, Trucking, Agar and Sweets.

11. —and I am almost finished—It was further a part of the said conspiracy that the defendants would file and

cause to be filed false returns of partnership income for the Eatsum Food Products Co., Ltd, and Tavern Fruit Juice Company.

12. It was further a part of said conspiracy that the defendants would conceal assets of William Giglio and Frank Livorsi for the purpose of evading the payment of taxes.

Now, that is a long count in the indictment. It charges a good deal. It sounds very complicated. It is actually very, very simple.

We are talking about $850,000, or a little bit more; in round figures, $850,000. Of that $850,000 these men paid about $16,000. That is all they paid. They evaded taxes [fol. 2972] in the amount of something over $300,000. They evaded the payment of taxes in the amount of about a half a million dollars. That is what we are talking about.

It sounds complicated. It really is very simple, and I am going to give you two examples, one of evasion of taxes and one of evasion of the payment of taxes, so that you will see how very simple this case really is as the evidence unfolds.

Evasion of taxes: It was done in almost every conceivable manner known to the tax authorities. But I am going to pick just one of the methods. Eatsum Food Products Company operated at a time when, if you will recall, sugar was in very, very scarce supply. Corn Syrup could be used for many of the same uses that sugar could be used. These defendants managed to get hold of corn syrup, lots of corn syrup, hundreds of thousands of dollars worth of corn syrup, and of course they could sell it at a tremendous price, because it was worth almost gold to the various biscuit companies.

All right, what did they do? You would have assumed that they would buy it and they would put down on the books that "We bought corn syrup in the following amounts," and they would sell it and they received the following amounts of money on sale, and "We made this profit and this is what we owe you." They didn't do that at all.

You are going to hear an awful lot of talk about a little green cash box, and in that cash box went over

$400,000 in sales, and profits of $140,000; not one penny of which ever went on the books, and not one penny of which ever was received by the United States Government by way of taxes.

Now it is that simple: $140,000 in net profits in cash [fol. 2973] operations. That doesn't require any understanding of any Title 16 or anything else. It is just a cash box; currency, notes in it; nobody knows about it; never put on the books, never reported to the Government. That is evading taxes. There are lots of other methods you will hear about in this case as the evidence unfolds, but I have selected one so you can see that it really is very simple.

Evading the payment of taxes: As I said, these men filed returns showing that they owed a lot of money. They couldn't sit around with assets which the Collector might find, homes, bank accounts, and so on. They had to do something before those returns were filed or right at the time they were filed.

As one example, the defendant, Frank Livorsi, in 1946, purchased a magnificent estate in New Jersey, owned at that time by fight promoter Michael S. Jacobs. He sold it in September, 1947. He sold it for a net price to him, after all mortgages and everything else was paid off, for a net price to Frank Livorsi of over $64,000.

When he received the check in Long Beach, he didn't deposit it in any bank. He didn't even cash it down there. He went all the way back to New Jersey and he said, "I want cash," and it took some time to get that cash, because the bank out there didn't have that kind of money, had to get it from the Federal Reserve Bank.

Days went by. Finally, on September 25, 1947, he went back to the bank, the bank president handed him $64,000 in currency. He didn't count it, he stuffed it in his pants, and he walked out, and Uncle Sam never saw one single penny. That is evading the payment of taxes, concealing assets.

Now, ladies and gentlemen, when I started, and I am [fol. 2974] sorry that I have been as long as I have, I mentioned certain general, overall principles to you, and they are all important; not only in this case but in any criminal

case. I mention in particular that the defendants must be found guilty beyond a reasonable doubt. Judge Walsh will explain at the end of this case what that means, but I know that when the evidence is all in, that there will not be any doubt in your minds of the guilt of these defendants, and that you will come back with a verdict of guilty as charged.

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OPENING STATEMENT ON BEHALF OF DEFENDANTS

Mr. Stryker: May it please your Honor, Mr. Foreman and Ladies and Gentlemen of the Jury, Mr. Wessel:

I listened, as I am sure you all did, with the greatest interest to the very able presentation in the opening address of Mr. Wessel this morning. I thought as I listened to it how fortunate we are to live in a country where no one could be sent to jail on the prosecutor's speech.

As Mr. Wessel pointed out, before anyone in the United States can be convicted there must be evidence that convinces each and every one of you beyond a reasonable doubt that the charges preferred in this indictment are true. And I am very glad that is so, and I thought it was very fair of him to say what we all know, that in the United States, unlike some Continental countries, every man who is charged with an offense is presumed to be innocent until the contrary be shown beyond a reasonable doubt. That is not a mere idle form of words. That is the presumption that the law makes and imposes on you ladies and gentlemen and on all of us.

[fol. 2975] I think perhaps you might get some idea of this prosecution if at the outset I give you, as I shall, a very short statement of the history of the prosecution, and then come to as many of the matters discussed by Mr. Wessel as I can. But I should say at the outset that there are some things that I won't be able to discuss at this time, for the reason that we have not been apprised of what the charges are. I will make that a little more specific in a moment.

Counts 7, 8 and 9 charge that these defendants concealed and diverted assets. That is all. What the assets were, what the property was, where it was, when, how and by what means it was supposed to have been con-

cealed or diverted is not anywhere stated in this indictment, and we have no bill of particulars which tells us. For the first time this morning I learned the charge about Mr. Livorsi. I am not able to discuss that because that is the first time I have heard it. I would like very much to have been apprised of the charge beforehand, to be prepared to give you our side of it, but I was not, and so I stand before you with respect to many of the charges where the details or the facts or anything that enables us to prepare for trial have not been forthcoming.

Mr. Wessel made another statement about the law which was absolutely correct and fair, and that is that before you, any of you—I am glad to see we are in entire accord about this—could dream of convicting any of these people, you must find beyond a reasonable doubt that they knowingly and wilfully filed the alleged false returns. The importance of it evidently impressed Mr. Wessel, so in that respect I agree with him heartily. Whether these returns, or any of them, were correct or not, will not decide this lawsuit. The point at issue is whether or not these defen- [fol. 2976] dants knowingly and wilfully filed false returns. On that issue there will be a great deal of evidence. There will be evidence, I think, that will convince you and every lady and every gentleman in this jurybox that whatever happened there was no wilful and knowing filing of any false return whatever.

Let me get that very straight to you, and I hope as the evidence goes along—I do not think I have to say this to a New York jury who probably know this, as you have all served on juries, though perhaps not a case of this kind. In other words, stating it another way, if some return that one of you ladies or gentlemen filed, prepared, let us say by an accountant that you trusted, as was the case here, as it turned out had an omission or an erroneous statement in some respects, we have not yet reached the point in this country where any jury could convict you of filing a false return, unless the jury were persuaded beyond a reasonable doubt that you knowingly and wilfully did so.

I was about to say something and I interrupted myself, I guess, to give you an outline history of the case, and it

will tie in with some of the things that Mr. Wessel told you and with a good many things that he did not tell you. Let us start at the beginning.

When Mr. Twohig, the gentleman that sits over there drumming on the table, began investigation of the matters here involved ten years ago, let me tell you what he began doing. He began investigating the affairs of a man not even mentioned by Mr. Wessel and that I shall mention. His name is David G., or G. David, I don't know which he calls it, Lubben. Mr. Wessel has not told you whether he will call him as a witness or not, and of course I do not know. But I was a bit surprised when he talked about [fol. 2977] the Eatsum partnership and mentioned what he said was a partner. Mr. Giglio was with Livorsi, and he did not mention to you that the principal partner was this man David Lubben, the investigation of whose affairs was begun by Mr. Twohig back at least seven years ago, in 1948. I think I am correct, I am sure I am, that in the indictment his name is not mentioned. That is right, isn't it? I think so. Lubben—David Lubben.

Again I have interrupted myself with the history. We have gotten now from Mr. Twohig, in the beginning of his researches in this matter ten years ago, to the point where he began to investigate Lubben's affairs in '48. Now what happened? They all are over there, the Government's very able special agents of the Internal Revenue Bureau. You have heard something about the books—they could not do anything until they had the books. I will tell you what they did. They had the books of all the corporations, all of them, for seven long years. American Brands and all these other companies. They had those and were working on them.

Let me try to pursue a chronological statement, which I think I have interrupted two or three times, and I hope by it have not confused you. In '47, what happened? Nothing that we know of. What the Internal Revenue Department was doing I don't know. In '49, nothing. In '50—1950, now coming down to more modern times, only five years ago—in 1950, on September 15th, three informations were filed by the then United States Attorney, charging these defendants or some of them with misdemeanors, violations of the Internal Revenue Code.

Now they were brought to court, pleaded not guilty, were [fol. 2978] released on bail—and what happened then? Well, the Government asked for an adjournment, and then the cases were marked off the calendar. So after five years of Mr. Twohig's work we now find the defendants under criminal charges that for reasons that I think I know—but I better not state what I think. I am only here to give you an outline as well as I can of what I expect to prove and what the evidence in this case will show—five years now, and they bring these informations. Those are things not found by the grand jury, as you all know. They are marked off the calendar.

What happens then? In '51 did they press the informations for trial? Oh, no, not all through the year 1951. Not at all. So 1951 comes and goes, and we are now in the sixth year of Mr. Twohig's investigation, which I have said began with the investigation of Mr. Lubben. Six years go by and we are now getting down to 1952. All this time these informations charging these gentlemen with criminal offenses are there, and for whatever reason—perhaps when I sum up I will be able to supply a few reasons, but I do not do it now—for whatever reasons, nothing that happened down to 1952, and January, February, March, April, May and June go by of 1952. Are they brought to trial on these old, stale informations that were never pressed for trial? No. But what did happen? I will tell you what happened. Something was done by a then assistant United States attorney no longer connected with the United States Attorney's office, disassociated quite promptly when Judge Lumbard became United States Attorney. And what I am about to say, what I will prove Mr. Leone's actions were, I want to make as clear and positive as I can, is in no wise a reflection of any kind on [fol. 2979] Judge Lumbard, whom I greatly respect and admire, nor is it a reflection on these gentlemen here who are prosecuting this case. They are not responsible for it at all; they just inherited what was done, and they had a job to do and that was their job, and it is all right.

So in 1952, in July. Now get the chronology of this. To this time Mr. Twohig has been investigating these affairs, and now it will be seven years, seven long years,

and for whatever reason I don't know they didn't choose to proceed with the then criminal charges.

I suppose here in an opening I am not—probably it would be better if I did not draw inferences or make any argument, as my good friend has given me a good example about it. July. And then there was the equivalent of what in Nazi Germany or Russia was a knock on the door (illustrating). What do I mean by that? I mean this: that contrary to the law, contrary to the Constitution, in deliberate, contemptuous, flagrant violation of their rights and of the common decencies that we respect in this country, this Mr. Leone caused a grand jury subpoena duces tecum to be served on these defendants. They hadn't gotten enough evidence up to this time, in seven years, I judge by their conduct, to justify going forward with the prosecution—so now let's see if we can't get something right out of the defendants themselves. So they served the grand jury subpoenas. They were illegal, they violated the Constitution. What if anything Mr. Twohig had to do with that I don't know, and I will make no statement and no charge against anyone that I am not sure that I can prove. He was there, but he may have had nothing to do with it for all I know. I think the evidence will show that he worked closely all the way through with Mr. Leone. Don't forget that name, please [fol. 2980] any more than you forget Lubben. So Mr. Wessel has quite properly stated the law, though his Honor will determine that, not me, and you all know that it is the law in the United States—Russia is different—that one cannot be compelled to be a witness against himself. Now we all know that.

Now right in the face, and right in the teeth of the Bill of Rights that came down to us from the Founders, they decided this time they would make an exception—and what was the Constitution among the persecutors of these defendants? I have used that word advisedly, because it is a fundamental part of my defense that this whole lawsuit, this action, is founded in bad faith. Again I am not referring at all to Mr. Wessel or Judge Lumbard or his office. They have been instructed, or in my opinion they never would have done this.

So the defendants responded to the grand jury subpoenas. You know the grand jury subpoena said, Come and testify or suffer penalties. I have told you we have heard a lot about books and destruction of books. No one has told me what book or what paper has been destroyed, nor has Mr. Wessel. I would have been interested to have him tell me. He was making his opening, I was not. All this indictment, which is nothing more nor less than a scrap of paper making a charge, is supposed to do is tell a defendant what he has to meet, but it does not tell us. All right, I interrupted myself.

So they came down to the solemn grand jury room, in deliberate, contemptuous, cynical violation on the part of the assistant of their rights, and they are sworn as witnesses. Now, mind you, they are defendants in a criminal case at that time. At the time Mr. Giglio declined to answer certain questions. Bring the grand jury down to 318. [fol. 2981] says the assistant; and they troop down there in a solemn parade. Before a Judge of the United States District Court, but not of this district. Of Alabama, I think. And Mr. Giglio says to Mr. Leone as they are outside the room—he was represented at that time, Mr. Leone was, by counsel I have never met, I did not come into this case until about six months or so later—Mr. Giglio said, What is this? Well, they are going to bring you in here and punish you for contempt. Well, if that is what it is, and if it is a question of going to jail or convicting me of contempt, I would like to have my lawyer in there. You know under the United States Constitution all of us, the least of us, is entitled to representation by counsel. Did they let the lawyer in? Oh; no. Mr. Leone puts his hand at the door, bars the lawyer out, and says only you, Giglio, and they march in before this judge.

I will tell you what happened there, and I can be pretty accurate because later the minutes of the grand jury that revealed this were furnished me by the court. The judge naturally wants to know what this is all about, is this proceeding against the defendants? No, says the assistant, this is a John Doe proceeding. Of course, later on I won't say that something might not develop against the defen-

dants, but the answer to the judge's categorical question is no. He then ordered the defendants, this particular defendant in this case, Giglio, to go back and answer those questions. At that point, having no counsel there to represent him, alone in a proceeding that was as illegal and as unconstitutional as anything I have ever seen in my long experience in these courts, Mr. Giglio himself, unadvised, stands up and says: Your Honor, nothing is said about whether I am a defendant in a criminal case; I am a defendant in three informations for trial, a defendant now. [fol. 2982] Wouldn't you think—and I think you will think from the evidence—that the assistant might well then have said, Yes, that is so? But he didn't. From which the court of course concluded that he was not telling the truth about being a defendant. So their march began—marched back to the grand jury room; and there they answer more questions. And then Mr. Leone says, Have you brought your books? What books do you want? Corporate and partnership books; all of them, bring them.

So he went out and dug around as well as he could overnight and found enough books and papers to fill a station wagon. I think about two tons. Two tons of books and papers, of his personal records, his partnership.

Well, those were not destroyed, and he brings them up to the grand jury. All in deliberate, on the part of the then prosecutor, violation of his rights. And following that lawless proceeding, that flagrant and indifferent violation of his elementary privileges, six indictments were found against these defendants. Six were found. If I remember right, I think that was in September of 1952.

Now we are advanced seven years. Seven years since Mr. Twohig began this thing. And the question then comes up of fixing a day for trial, and so forth, and about that time, September I think it was, I came into the case. Now I will admit that I don't like to be pushed around or see any American citizens pushed and shoved around. I just don't like it. So I decided I would see what I could do about it. And I did something about it. It was inconceivable to me, and I later stated this in open court, that a thing of this kind could happen in free America, where

we are not governed by the Internal Revenue Department, [fol. 2983] nor are they the judges of the rights and wrongs of individuals. Although I will show in this case they did a good deal of judging on their own account. But now thank God at long last I stand here before the representatives of the American people, and an American jury, who are the sole and exclusive judges of the facts. Not these agents, not some assistant United States attorney. You. Therein lies and rest the liberties that we Americans believe in and have so often fought for and will fight for again, and I hope there will always be somebody around to fight for them in the courts of justice, even as I am doing it now, although perhaps they will do it better.

So without going through the legal proceeding and all, I brought on a proceeding and the six indictments were dismissed. Just dismissed, that is all. That is something, isn't it? That was seven years of Mr. Twohig's work of hunting and pursuing these people. And now that must all go out the window because of the illegal acts of a certain man, an assistant United States attorney by the name of Leone.

Now let me go back and catch up a bit. We asked, or I asked, when I came into the case, the privilege of examining the books and records. By this time they had, you know, not only the corporate books, but I think it will appear in evidence the high-handed way in which the Government got them—I do not know whether it was illegal or not, this high-handedness, as this whole thing has been high-handed—from the receiver.

And thereby hangs a tale that I am coming to. Because all these companies went into receivership in New Jersey. I think some time in December 1947. Now on the day when the chancellor of the court ordered the return of the books and papers to the defendants, these agents served a sub- [fol. 2984] poena on the receiver and got the books. Concealed books. Concealment. And they had those, and they had our partnership records and files, and I asked the chance to have some accountants look them over, for what would I as a lawyer know without it? You have to help me in this case as we struggle through a lot of figures. Well,

we had them in there for a month or two, and when the indictments were dismissed of course there was no more point in having people investigating papers in the case where the judge had declared the indictments illegal, as heaven knows they were.

So the Government took an appeal from this decision, and for what reason I do not know, but I only give you the dates. My own opinions about it I will spare you at this time. Perhaps I may say something about them if this case gets as far as your consideration. At all events, for whatever reason the Government did not take a timely appeal from Judge Goddard's order. Although in the meantime we were put to the enormous expense of briefs and all that, of course. Because the appeal was illegal in that it was not taken in time, I moved to dismiss that, and that was dismissed.

Now you will begin to get something besides the cold, laconic, very able paraphrase or reading of the indictment. That is what you had this morning, mostly, except one or two items which were dropped in about which we had had no previous warning or advice at all. You begin to see there is something more to this than just this piece of paper. By the way, I should say what that paper is. While this appeal was pending, the Government went and got what is called a secret indictment. Of course all indictments are secret until they are opened. That is, this indictment that Mr. Leone has so ably paraphrased for you, [fol. 2985] that was obtained I think in—when was that, September? I forget. In July, 1953. And of course we were only defendants, you see—not entitled to much, even our constitutional rights. At any rate, we were told about this. All the time the appeal was pending in the upper court they sort of had this ace in the hole, and it comes down now to January 1954.

Now we are really getting down to modern times. That is nine years after Mr. Twohig began. Nine years. Then this indictment was brought into court and opened. You were asked, in a very effective way, I thought, by Mr. Wessel, to consider the fact that these taxes were not paid. Now let me make that perfectly clean-cut to you. They

were not paid. There is no doubt about it. There is no mystery about it, nor is there any mystery about why they were not paid. They were not paid because these people went broke and had no money with which to pay. They utilized an American prerogative, which is either to succeed or go broke. That is what has made this country. They went dead broke, and all these corporations went into a State receivership, and Mr. Giglio himself in due course, I think it was '51, filed a petition in bankruptcy.

Now that being so, we find now a little clearer light on the contention. They know all this, they know they were broke and could not pay. So now they have to find some kind of charge. Well, they concealed the assets. No one has told me what assets were concealed. The first time I have ever heard anything about it, except the mere words in the indictment, was this morning; and obviously I cannot discuss something I learned only this morning.

[fol. 2986] Now they did not pay their taxes because they could not pay their taxes. I hope none of you gentlemen have ever been in the position that you did not pay something because you could not. I will say this: some of the finest people in this country, some of the people who have gone off to the point they welcome paying, have found themselves in a position where they could not pay.

So it has never yet become a crime, nor can these agents over here make it a crime.

You will hear a lot of talk about the Government. Let me tell you one thing: they are not the Government, they are hired men, that is all. We, the people, are the Government. We elect and defeat Presidents, legislators, Senators. We are the people and we hire a lot of Internal Revenue people, too, since we have this Income Tax Law, and as long as that amendment stands of course there it is. They take any amount of your money—up to ninety per cent I think it is—which I cannot complain of. I cannot complain of confiscation of anybody's income, and as long as that constitutional amendment, the Sixteenth, is in force, we will have that. Whether it will always be in force I don't know.

I remember seeing a lot of agents around these courts after the Eighteenth Amendment, which we the people

finally decided we ought to know more about. I wonder what became of those Prohibition agents. I don't know, but we don't have them any more. However, right now we have the law and we have this amendment, and we have the income tax, and no matter how much you spent by the Government it is none of my business and it will not be my business until I can do something about it with my vote as a citizen. Take the money, pour it around anywhere they like; it is perfectly legal, we cannot stop it. [fol. 2987] But in all this, in all this remember the Sixteenth Amendment is not the only amendment in the Constitution, and as yet the others, except the Eighteenth, which, thank God, was repealed, are there.

Now I come to Mr. Lubben. I noticed with the greatest of interest, as I have always said, the omission of his name in Mr. Wessel's opening. Now Mr. Lubben was a partner, I am sorry to say, for a brief period in the Eatsum Food partnership, beginning about June 1, 1945 and ending finally about March 9, 1946, and I think a dissolution agreement was signed in June. It was Mr. Lubben. He was in the candy business, and he wanted very much to join with our people because they had a large sugar ration quota. And he hoped that my people would divert some of that quota to him, for sugar.

Now did they do it? They could have made hundreds of thousands of dollars by doing it. I think when the accounts are figured up—maybe the Government will help do this—about $500,000 profit they could have made if my clients had chosen to violate the law and give him the sugar. And I will show that he said he never got enough sugar.

You will see these things in the indictment, in a nice able paraphrase of it. But when you get in behind I tell you what it is like. It is like this: you go out in the field, in the country, and see a flat stone, on a Sunday, and you kick it over and you will see a lot of slugs worming their way underneath it. I am going to kick the lid off the top of this case if I can. And I am going to call, when I produce the evidence—I won't do it in advance—people who will call things by their true names.

I am defending three American citizens presumed to be innocent of every charge in this final indictment, the last [fol. 2988] version. And I am so thankful that I am here at last with twelve citizens of the United States who will not be intimidated by revenue agents, even though they sit there in array before you. You are a jury, and you know a jury is a great institution. Before a jury all of us stand, whether we are revenue agents or whatever we are.

So Lubben. We have heard about this corn syrup. Mr. Wessel perhaps forgot that it is all over the records of this case, and in the testimony, that Lubben was responsible for that corn syrup deal, ran it and was responsible for Eatsum, and has sworn, and if there was anything the matter with that he was to blame. Yet you get the idea that we have done something terrible. He conceived the idea, and he said, and I dare say it is true, that it was done by many others getting corn from the farmers to the refiners, and then corn syrup.

The way that was done was to go out—there was not a rationing but there was a ceiling on corn syrup, is that right? Yes, I thought I had it right. They go out and pay the farmers not by the cornstalk, but pay them so much, I think 5½ cents a bushel, to sell the corn to the refiners, who would pay the ration ceiling price, and in turn the refiners would sell the corn syrup to others. And that was done. He said somewhere that the way it run was a legal thing. I do not know whether it was or not. Frankly, at this point I do not much care, because let us get it clear what we are being tried for. We are not being tried for any OPA violation, we are being tried for the specific things and nothing else, set forth in the indictment—namely, the charge that we filed knowingly and wilfully false income-tax returns.

Now this operation of Lubben lasted, I don't know, four or five months. I think it began in August. There may be some conflict about it. August of 1945 and ended [fol. 2989] in December. Ended because Mr. Giglio put a stop to it. Well, while Lubben was operating this corn deal he did have a box. I don't know whether it is green or not, but he had two boxes, because he had a box when he

had the candy business, where he had done this kind of thing, too. And money did go into that box, and money did go out. Lubben sold some of his corn syrup over ceiling prices and got cash. It went in the box, and out of the box. That is the corn syrup. Lubben. I wondered why he had not been mentioned, because we come to the first count, or one of the counts, the count as to Eatsum in this indictment.

Now, one of the things that Mr. Wessel dilated on was the first count of this indictment. Read it, read it very well, very effectively. That is the first criminal charge that has been leveled against my clients; and the charge is—and he has told you that—that we are charged with filing, unlawfully, wilfully, and knowingly, counseling, the preparation and presentation of a false and fraudulent return, partnership return of Eatsum Food Company.

We did get a little bit of information, not much, out of the Government after a long struggle, in the shape of a partial, very partial—not partial to us—bill of particulars.

You heard Mr. Wessel say something about $140,000 earnings. Now, the bill of particulars advises us that the bill is supplementary to the indictment, that there was an additional income not reported of $140,000.

Now, that, although I did not get a very clear picture from my friend's opening, was the amount of cash that was left in the corn box when Mr. Giglio put an end to it.

Now, the only way in the world they can establish or try to establish that count is through the testimony of this man Lubben. That is all.

[fol. 2990] You will be interested if he comes, I am sure, and if he does come, if he does came, you are the sole and exclusive judges of the facts, and that means the credibility of witnesses, and if he is here, we will inquire into that question of credibility in great detail.

Now, so that rests on Mr. Lubben's word. As a matter of fact, when that corn box was finally ended, $70,000 of it was turned over to Mr. Giglio and Mr. Livorsi—that is, $35,000 apiece; and they reported more than enough to cover that in their income tax returns.

The other seventy was made up in part of cash and part of Lubben's IOU's. He has testified he never got it. If he is on the stand I think you will be interested in some questions that I will ask him.

Now, this case, aside from Lubben, and aside from another gentleman, whose name is only mentioned long enough to tell you that he had been a defendant and pleaded guilty, that is all we heard about Louis J. Roth, that is all, just that, defendant, pleaded guilty, period, pass on to the next subject. Let me tell you something about Roth:

Roth, unhappily for us, was our accountant. Roth kept the books. Roth prepared these returns which were signed. My clients, in good faith, relied on him, and trusted him, and accepted his figures as he gave them to them.

Now, they are not bookkeepers; they don't know anything about bookkeeping at all, keeping books or writing income tax returns, and I am very sympathetic with them because I think I am even worse. I don't know how many of you ladies and gentlemen make out your own income tax returns. Many people don't try; they let an accountant do it.

Bookkeeping; books and records; all the books of the [fol. 2991] corporations and from the illegal obtaining of the partnership books, the partnership books, all that we could then find, from about July until, let's see, March, July, 1952, to March, 1953, when the indictments were struck down, comes book transactions, back and forth. I hope when you come to that, and they put on accountants and probably big blackboards—they usually do it very dramatically—I hope you will remember some of the things that Mr. Wessel told you, that you can't convict these people, not in the United States, not yet, of fraud unless you show that they knowingly and wilfully did these things.

Now, this case, when it comes to the bookkeeping, is a synthetic job, synthetic, put together with paste and shears, a question of an offset here, an allowance there. For instance, in the Tavern Fruit Juice they don't allow $72,321.17 as a closing inventory, but they do allow it in American Brands, the exact figure to a penny.

By the way; I heard a lot this morning, and I dare say you will before this case is over, you will hear a good deal from me, too, or my witnesses, about this consolidated return that is supposed to have been one of our principal frauds, one of our great crimes, filing a consolidated return.

Now, let me tell you something: In the first place, the whole count and the whole charge against the American Brands Corporation goes right out the window, right out the window, if actually or in equity it was a consolidated return.

Now, under the strict language of the statute, where one corporation files a consolidated return for others, it has to own on the record 95 per cent of the stocks, the stock of the other companies. That is true; that is right. [fol. 2992] And let me hasten to say that on the record that was not so here. I will help the Government to that extent. But let me here discuss Mr. Wessel's analogy of Ford and General Motors, or, which was it, Chrysler, I have forgotten. At any rate, it is nice if it had any application to our facts.

You see, the Ford directors I don't think have much to say about General Motors, as far as I understand it, or vice versa. Now all of these companies, I guess there were ten or more, I can't remember, were all run by the same people. The stock records were kept in a pretty slovenly way. The fact of the matter was that they had these corporations, but really, they were all operating as one.

Now, let me give you—I will give you much proof of that, because, remember, you have got to find that they knowingly and wilfully filed a false return.

My clients believed that the details of this stock transfer had been made. They were mistaken, but they believed so, and I will show you that a report was made by Roth to Dun & Bradstreet setting forth that there was a consolidation.

Now, let's see, these frauds, these victims of Lubben and Leone: Every one of those stock books, stock certificate books, were among the papers turned over by force in response to this invalid and illegal subpoena, turned over to the Government.

Now, it would have taken about seven minutes to put through resolutions transferring this little company's stock, American Brands, a book transaction—you gentlemen are familiar with the stocks and stock certificates of corporations—and it was supposed to be done, but it wasn't done. [fol. 2993] Let me show you—and I will start right here and you can take a hold of this one—the integrity of these men, and the falsity of the vicious charges that have been leveled against them in this case.

They had those stock books in their possession. If they had wanted to forge or falsify, which is the kind of thing they say that we love, they would have done just that before the stock books were turned over to the Government. They didn't do that any more than Giglio would sell enough sugar to Lubben to sweeten his coffee with.

Now, take the charge against the Tavern Fruit Juice Company, one of these companies—let me see—well, they don't allow $32,780.93 for research development. In their infinite wisdom they don't allow that.

I would like to see them prove that that wasn't a legitimate expense. Mind you, Mr. Wessel said the burden is on the Government. Prove these things, not just prove them by a civil case, just by balancing, beyond a reasonable doubt, that an honest man believes it in his heart beyond a reasonable doubt, and one of the things that Mr. Wessel did not tell you—he talked about this money—he didn't tell you that he took his own money from one of these other corporations and poured it in to bolster up the sinking ship of American Brands, about $300,000. I think it came from—was it Tavern or Loraine, or what? All right, because he wanted to keep faith with his creditors, not deceive them. That wasn't stated.

You see, I have to make this opening a little bit in the dark because, unfortunately, they have not chosen to give me very much detail, especially about the thing that he had dwelt on most as the thing that I suppose he felt was the worst, this concealment, why they wouldn't tell us [fol. 2994] what the concealment was, the diversion, I don't know, but they didn't.

Now, although that is not directly in issue, you want to know whether these people were running a decent, honor-

able business, whether they were honorable men or whether they weren't. Everything in the world will be done to make you believe they were not. I will tell you they were. The business they ran was 100 per cent legal, with a possible exception of this corn deal that Mr. Lubben pushed on them. They never were in the black market, if that was black market, until that time for three months with Lubben, or after he left.

Mr. Giglio is a young man—he is now only 40—ambitious, able and like any American boy who wanted to go into business and do what he could, honestly, and so he went into the jam and jelly business, which is what the Tavern Fruit Company, his company, was doing when, unhappily, this Lubben descended upon them.

Now, here is a peculiar thing in this case: Mr. Giglio has gone into bankruptcy. We have no more money. His company is in receivership.

I think you will find that Lubben did not go into bankruptcy. I believe before I am through that I will show you the real tax evader; the real criminal in this case is what I am sure will be their star witness, Lubben, and there will be a curious circumstance if the evidence so develops, as I believe it will, and one on which I will talk much more when you have heard the witnesses, that somehow or other Lubben, although he was the first man investigated—they had all his returns, and it will be a cinch to prove that they were faulty and fraudulent, and that somehow or other, for reasons that I don't know—I surmise, but I am not allowed to tell you my surmises, I sur- [fol. 2995] mise the reasons why, but I don't know—somehow Lubben has led a charmed life, a charmed life. Never been prosecuted—Lubben.

Now, Mr. Wessel didn't tell you much about this receivership in Jersey; all these corporations went broke and went into receivership in the Jersey courts. Mr. Twohig and the agents were there at the hearings.

Finally, the receiver and the court discharged these gentlemen in the receivership and thereby, I think I shall show, accepted what is the real fact, the equities and truth of this—no, cold law, it wasn't a consolidation.

Now, let me be just as frank as that. But in equity and in good faith and in morals, and what we are talking about, what a jury is interested in, it was.

Now, did they object to this charge? No. Well, they heard all the evidence. Did they bring any action against my clients in the civil courts? No.

That is what this case ought to be, a civil case, but after five years, as I have said, they finally work it into a criminal charge which they let die for two years more.

Now, I don't know why this man Lubben has led a charmed life. I don't know. I am going to try to find out; and I will say to you, I wish this was a grand jury, not a petite jury for the moment. I would like to have process to really look into that. I don't know.

Living in splendor down in Puerto Rico, not a bankrupt. All our people are broke, and then some.

How did that come about? I don't know. The Government does—I say the Government, and when I talk about the Government, I don't think about our paid people; we call them the Government, these agents, filed some kind of a lien against Lubben—I think it was $17,000 or something; penalties, interest. Oh, no, not against Lubben. Oh, no, not that.

[fol. 2996] Now, Roth: I don't even know if he is going to be a witness. I think, I must imagine that he will. They have gotten a plea of guilty out of him now, and if he is a witness, I think you should have before you this fact: Roth, the accountant for these people, unfortunately, that is a fact. Now there came a time, I think it was December—wasn't it, before Judge Skelly Wright?

Mr. Wolfram: July.

Mr. Stryker: July, last summer. He had pleaded guilty to a few criminal offenses, all of which were committed long after we had anything to do with them, and the question was whether he should be immediately sentenced. He was represented by two very able and very honorable members of this bar, Judge Ferdinand Pecora and Jack Rosenblum, and Judge Skelly Wright, from somewhere in the South, was forcing—wanted to sentence him, and was asking whether or not Roth could furnish any information to be helpful to the Government.

Of course, what they meant was us, because it is all concentrated on us, everything.

And Judge Pecora, whose word I would take as quick as any man in the United States, stated—I have the minutes—that he did not know how Roth could help them because Roth had consistently denied to him that there was anything he could tell.

Mr. Rosenblum made a similar statement.

The Judge still persisted. He said, "Well, if you will give us time to look at the books, maybe we will find out something."

Finally, in a statement made by Jack Rosenblum, in Roth's presence, which he must adopt, he said, "Well, you are forcing us at the point of a gun."

Now, remember that, if Mr. Roth testifies. I don't know [fol. 2997] whether he will. I don't know or have any idea what he will say. I don't know.

Now, ladies and gentlemen of the jury, a great point is made of the extension of these returns.

True, extension was obtained by Roth from sometime in—what was it, 1947 or 1946?—1947 until September; that is true, that is right.

Now, there is a perfectly—of course, when a man is charged with a criminal offense, and four or five agents sit here and glower at him and the Government proceeds to prosecute him, everything is put in a black light, everything he does.

Well, you all know, you business men, about the carry-back provisions of the internal revenue law, that you can carry back in one year the losses of another, and when the returns were due, when they were actually due, these people were totally unable to pay because they didn't have the money. It is just like a stone that you try to get blood out of. And they saw American Brands was going down and their losses might increase, so the extension of the return.

Now, that is twisted and distorted into some kind of a terrible criminal act.

Now, then, there is some slight preview of this case. I have taken more time than I perhaps should, but this is a case—Mr. Twohig has been on it ten years now.

There is one forgotten man in here that I didn't mention, not that I have forgotten him, Howard Lawn, who sits right over there in the middle. Howard Lawn, as Mr. Wessel has correctly and very fairly told you, was an assistant United States Attorney in New Jersey, head of the Criminal Branch. I haven't heard anyone impeach his character, his record.

[fol. 2998] Graduate of Harvard; that is not a crime in my book, although I didn't go there. And what is the charge here against Mr. Lawn? Is he charged with filing a false income tax return? Oh, no, not at all, not at all.

I have used the word "we" a lot of times, referring to my clients. Mr. Lawn was connected with them for a time, but let me just run over lightly the indictment, ten counts. Is Mr. Lawn charged with anything in the first count? He is not.

Second count: He is not.

Third count: He is not.

Fourth count: No.

Fifth count: No.

Sixth count: No.

So we walk through six counts without anybody saying anything about Howard Lawn.

I am now to the seventh, and we are told that he was one who did conceal the assets of William Giglio.

Now, what assets? Where? When? How did he do it? Did he put it into his pocket or did he burglarize his house or what did he do? I don't know what the charge is. I will be interested and I will only learn now, I see, from the evidence, because I have no bill of particulars. The indictment is meaningless.

Again, let me see, does he come into the eighth? Is that right, Mr. Wessel, is he in the eighth?

I don't think so, the eighth count. Not in the eighth count.

In the ninth count, now that is the second time in this long paper that they wave around here, this indictment, which, as Mr. Wessel has very fairly and very properly told, is nothing in itself, it isn't evidence, although the public thinks so, the indictment—well, a lot of people who [fol. 2999] haven't been around much think that is a convic-

tion. It is just a charge; that is all. And in this case, I think we will show you, a false charge, that is all.

Now, let's find out where Mr. Lawn enters again. Let's see—oh, yes. Now, this is the second time he is mentioned, count 9: "That he did," and so forth, "misappropriate and divert assets of the aforementioned corporations."

Let's see, the corporations mentioned are American Brands—what others, I don't know. He misappropriated their assets. What did he do? Burglarize their place? Drive up with a truck, go up a second-story window, do a little sneak thieving? What assets did he appropriate? Where did he put them? What did he do with them? I don't know what the charge is. I know he didn't do it, but I don't even know what the charge is.

I won't be able—I will be sitting here, standing here with you ladies and gentlemen, trying to get this case along, and I just will be taken by surprise all along, even as I was this morning by Mr. Wessel's statement about the house.

Then we come to the tenth count, and he is mentioned again.

Now, let's see about this conspiracy. I would gather, as I read it, the indictment, that the original charge made against Howard Lawn is concealment of somebody's assets. Well, of course, by his plea of not guilty he has heartily denied that, and we are not told what that is. We are given no way to prepare for trial, none. It comes on me as a surprise. I can't help it. There I am.

Now, the conspiracy count; I won't talk much about that.

Well, you know, there is a sort of a pattern about these [fol. 3000] things. Of course, it helps prosecution to make a kind of a sonorous, rolling, rumbling charge, so they make these different charges in nine counts, and then they take them together, roll up their sleeves, and knead them all together, and tie them in one package and call it a conspiracy. That is the conspiracy. Conspiracy—of course, they hope to prove it by this act and the other—conspiracy.

I think I am right in saying that there is nothing in that conspiracy count that hasn't already been stated in

the others, although there may be one or two items, I am not sure.

Now, I am defending three American citizens. They are entitled to the presumption of innocence. They stand here equal to the people that are prosecuting. They are just as much presumed to be innocent as any one of us, or Mr. Wessel or anybody in this courtroom. I hope you will be patient with me, because all I am defending is liberty; all I am defending is everything; that is all.

As I go to work to try to take this synthetic bookkeeping case apart, predicated on the testimony, I think—I base that not on a mere surmisal, but from much study of the records—of one of the most evil men that I ever heard about, and one of the most unconscionable liars that ever lived.

Now, when he comes, help me, will you, look him over. Put yourself in my position and the position of the clients I am representing, because you know in this whirligig of time I think we should all say to ourselves, myself included, Mr. Wessel, everyone, that there but for the grace of God go I; and when, God forbid, for some reason, business motives or other reasons that I think I know but will not state, the chips are down, and a grand jury, after [fol. 3001] hearing one side of the case only, files its charge, just all I ask you here for is to do justice; decide the facts. I am not asking for anything but that—I know I will get that.

Remember, I have told you that these gentlemen have pleaded not guilty of this charge. I believe they are not guilty. I believe the evidence will show they are not guilty. Maybe it will be difficult. I will have tough witnesses to confront; perhaps one who was their accountant. I don't know.

But one thing that sustains me, ladies and gentlemen, as I am sure it has sustained all of you in crises of your lives, and when you have lived as long as I have you will have as many crises, and I have one firm conviction, one real belief that is second only to belief in God, and that is, I believe that right makes might.

So this lawsuit entitled the United States of America

against these gentlemen, 160-odd million against three, large odds.

I know you will bear with me. I know you will be just and fair, and that is all I ask. That is all I have a right to ask; all I do ask, in fact.

So, when this case begins—this is the first time I have had a chance to talk to you ladies and gentlemen. Usually in the state courts, you know, you sort of have a chance to talk to the talesmen beforehand, ask them a few questions. You can't do that here; that is the rule; that is all right. But this is a pleasure, to have a chance to talk to you.

Now, all right, go ahead with this case. I don't think there is anything more I want to say to you now. I will say much, perhaps, later on.

Now, let the drums begin. Bring on your witnesses, let's see them.

* * * * * * *

[fol. 3002] The Court: The closeness of the relationship, or how it may bear on the merits, I cannot now anticipate; and my little experience here has prejudiced me in favor of a fairly freeswinging trial.

* * * * * * *

MOTION FOR JUDGMENT OF ACQUITTAL

Mr. Stryker: May it please your Honor, the motions, as your Honor will remember, were deferred until today.

I respectfully move this court for judgment of acquittal, notwithstanding the verdict, for the following reasons:

One, the verdict is not supported by substantial evidence; two, the evidence adduced at the trial is insufficient to sustain a conviction of any of the defendants of any of the offenses charged in any count of the indictment.

I should like, with your Honor's permission, to address myself first to the case of Howard Lawn.

Howard Lawn was convicted in this court of three counts of a ten-count indictment, namely, concealment of Giglio's assets, count 7; concealment and diversion of corporate assets, count 9; the conspiracy count 10.

If your Honor would now bear with me, I should like to be heard a bit on this particular question of Howard Lawn. Since the trial I have culled through the record and I have here I think a complete memorandum of every page in the record where Howard Lawn was mentioned by any witness. Let me state generally first that from that examination and analysis I do not find any evidence [fol. 3003] that would support the conviction with respect to the concealment of Giglio's assets or the diversion of the corporate assets, or the conspiracy. Your Honor through six long weeks of trial is very familiar with it, and yet perhaps you might not have—I am sure I did not until I examined them—the details of the evidence with regard to Howard Lawn.

Now I do not find any evidence to support the charge of concealing Giglio's assets. The only evidence on that subject was his obtaining a lawyer for the sale of Mr. Giglio's house. It was a normal, natural thing for a lawyer, any lawyer, to do, to suggest or find a lawyer to handle that particular real estate transaction. He did not suggest he obtained the services of an unknown or unworthy member of the bar; instead he got the services of one very well known and very respected member of the New Jersey bar. There was no clandestinity in that transaction whatever; it was done in the open light of day. The transaction of the sale was done in the normal course. The deed was recorded in the normal course. Certainly that was not concealment and I don't find in the evidence anything, any statement of the two main witnesses, without which I am sure you would agree with me there could have been no conviction, that would alter that situation.

Neither do I find any evidence of his diversion or concealment of the corporate assets. And of course the conspiracy count relates and is nothing really more nor less than a reiteration as far as he is concerned of the two substantive counts.

I am making this motion, and in this particular branch of it, in no formal or technical way, but in the belief as [fol. 3004] an officer of this court that a proper disposi-

tion of that verdict with respect to Howard Lawn would be the granting of the motion that I have made.

It would be tedious, and I won't take a busy court's time, important and vital as this question is, to run through perhaps a hundred or more items of the testimony. Most of it related to suggested statements by one or more, by Roth or Lubben, mostly Roth, I think, of what influence he is supposed to have had with Bob Hannegan.

Other statements to that effect—well, let me mention a few to bring it back to your Honor's mind, because I know you have had many things to do since I last had the honor of appearing before you. Now this kind of thing, Lubben says, "Lawn was not present when he discussed setting up a cash box for candy sales." page 109. The same witness, page 122, he says, if his memory serves him correctly, Lawn was present at the discussion about corn syrup, if his memory serves him correctly.

That kind of evidence. Lawn was a partner of Eatsum. I said that just exactly wrong—he was not a partner in Eatsum. Much was made in the testimony of the Government's main witness, Roth, about the fact that Mr. Lawn had been chief assistant of the criminal branch of the United States Attorney's office in New Jersey, and statements were made which were of a suggestive character. There was no direct evidence that Lawn conspired or entered into any corrupt agreement with regard to all of these returns. There is no evidence that he did anything about them, that he prepared them, authorized them or participated in their preparation or presentation. Nothing at all. Let me see just one or two more.

[fol. 3005] Roth said, page 1005, that he never discussed with Lawn anything with regard to the filing of the partnership return.

Your Honor will remember that Mr. Lawn's returns are not in question here in this case. On the $15,000 check which was much discussed in this case, your Honor will recall I think it was a journal entry which was made showing that which was the fact, namely, that that item of $15,000 was a loan. I think there was a stub some

where which corroborated that. Nor is there a charge in the indictment or the bill of particulars that Mr. Lawn did anything wrong or improper or fraudulent in connection with that transaction.

At page 1033 Roth said that he never had a conversation with Lawn regarding the profits in the corn deal; and, page 1036, never had any discussion with Lawn regarding the setting up of the corn block.

One of the statements that Roth made, and which was used with great effect by my very able opponent, related to a discussion about criminal intent.

Now the thought was left there that that discussion was a discussion in the course of the business, giving it a sort of conspiratorial note or innuendo. The fact, of course, is that that discussion according to the record took place after the informations had been filed. And I can't imagine a more normal nonconspiratorial observation than that which Mr. Lawn made, that the question of criminal intent was important, as indeed it was and is.

There was discussion about the Jersey receivership, and somewhere I think Roth said that Mr. Lawn had suggested that a State receivership would be preferable to a Federal bankruptcy.

[fol. 3006] Well, there is nothing that I can see that is in the slightest way conspiratorial about that. That was an honest lawyer's observation about a legal problem, that any lawyer might very well make. And anyhow, it was not in his control, it was not a voluntary receivership but it was on the contrary an involuntary receivership.

One of the overt acts, as I recall it, in the conspiracy was having a conversation with the lawyer. I have already covered that. I am not able to find anything criminal or conspiratorial in anything at all that was done with Mr. Tepper.

Now hurrying along, much was made and very considerable jury atmosphere was created by the alleged discussion in the Pennsylvania Station between Roth and Mr. Lawn. And all that was said was of course that the fact was that it was a loan and not a fee, or not—well, it was merely a loan. Lawn was the vice-president of American

Agar; he had a 25 per cent interest in American Agar and not in any other company.

Much was made and an atmosphere was created by the statement that Mr. Lawn had law books in his office. Well, certainly that is not a remarkable thing. I can state to you now—this is not in the record but it is a fact—that Mr. Lawn intended to go on with the practice of his profession. He had every reason to hope, I think, that he would do well in it. His background was such as to justify that, and the fact was that he had some law books in his office because he was preparing himself to take the New York bar examination, he not having been admitted long enough in Jersey to be admitted on motion.

Stripping the case, your Honor, of the atmosphere of [fol. 3007] this case, the unfortunate fact that Mr. Lawn was indicted, coupled with this little statement, that little statement, the other little statement, almost nothing by Lubben and nothing that I can see incriminatory by Roth—so without bothering you with a ten-page I think and careful analysis of the proofs against Howard Lawn, I submit to you with great deference but with all the seriousness that I can command, that here is really a situation where as a matter of law, just plain law, the three counts, the only three of the ten in which Mr. Lawn is mentioned, are not sustained by the testimony.

DENIAL OF MOTION FOR JUDGMENT OF ACQUITTAL

The Court: Mr. Stryker, I am going to deny your motion. I realize that compared with the volume of proof against for instance the defendant Giglio, that against the defendant Lawn seems slight by comparison. But I think there is ample in the record to sustain the verdict of the jury, and the points that you make only take an appearance of substance when we have in mind the volume of testimony against the other defendants. I will deny it.

Mr. Stryker: I respectfully except.

* * * * * * *

STATEMENT BY COURT TO DEFENDANT LAWN

Mr. Stryker: Are you ready to take up the Lawn matter now?

The Court: Yes, I think if you and Mr. Lawn would come up here with Mr. Wessel, for a second, I could tell you what I have in mind.

(The following proceeding at the bench, with counsel and defendant Lawn present:)

The Court: Mr. Lawn, I had a very moving letter from [fol. 3008] your wife, and a probation report as to your family and your children. It was very favorable. I do not know how much of the background of your two associates you knew. I do not want you to answer me today. I know you are a skillful and able man. I think you have got to decide. You have played along with these men, now you have gone through the trial and the jury had its chance if they wanted to help any one of you. You can press for yourself your chances on a reversible error. My own view is that there isn't any. On the conspiracy count, and I pick that out as the simplest, I would expect it to be affirmed. I could be wrong, of course.

I do not think you are a part of the enterprise, in the same class with Mr. Giglio and Mr. Livorsi. I do not say this disparagingly of you at all, but you were a man who was—I use the word "hired" in a good sense, and not in any invidious sense, by them, very much the same way Mr. Roth was.

Now I think you are in a position where you can be of help to the Government. I do not know whether the Government can get any further facts about Giglio and Livorsi or not. But I have heard the pattern of this enterprise over the past six or eight weeks and it seems to me there would be a lot of things the Government would be interested in.

I am going to adjourn this sentence, unless you object, and not go ahead with the sentence right now. I suggest I adjourn the sentence two weeks. You heard Mr. Wessel in court. I never knew him before he came into court, but I have come to respect him. I think he is straight

and honest, and I am sure you as a lawyer must appraise [fol. 3009] him in very much the same way I do. What I suggest is that we adjourn the sentence a couple of weeks and you have some talks with him. I am not interested in anything that is not honorable, or anything at all except that you fully, frankly and honestly tell him the truth about what I believe was a pretty rotten situation, which even involved getting to people in Government office.

Now I think around 1944 or 1945 you came out of the district attorney's office where you had done well, and this was a chance to make some money and you were probably a little over-ambitious. You got into this crowd who took you in a sense the same as they took Lubben and Roth. It got to be a very pleasant relationship, but I do not think you ever took them. I think they took you.

I do not say this in any bitterness. I do not suggest that there should be any bitterness between you. I think the service you can perform for the Government simply comes down to telling the Government the truth in all things they are interested in. If you want to take a couple of weeks to think it over, don't tell me now, but all right.

Defendant Lawn: All right.

The Court: Is April 1st all right for all the parties?

April 1st, 10:00 a. m. Continue the same bail.

Mr. Stryker: His bail is in my custody.

(End of proceedings at the bench.)

STATEMENT BY GOVERNMENT

Mr. Wessel: Your Honor, before you leave the bench, may I take just ten more minutes of your time. I know that it is an imposition, but I must say this for the men who worked on this case.

It has been difficult for them and has taken many years. There are a great many who worked on the case through- [fol. 3010] out. There are James J. Twohig, Ira Tilzer, Sam Krane, Milton Fichtenholz, Paul Mahon, Theodore Present, Jim King, Donald Haefele, and many others, but there are three that I would like to particularly name at this time to your Honor.

The first is James J. Twohig; the second is Special Agent Paul G. Mahon; and the third is former Revenue Agent Theodore Present. These men have worked for many years without any relief of any kind. They have undoubtedly not been able to turn out the number of cases, in volume, that they otherwise could have, because this case has taken up almost their entire time. That has perhaps resulted in loss of advancement, because they have devoted themselves completely to this.

Mr. Twohig has begged me to put him on the stand to answer the accusations that the defendants made. But I refused, because it would lead this case off into a field that might hurt its ultimate successful outcome. I felt that our goal and main object was to keep the trial limited to the issue of the defendants' guilt and not the guilt of Government agents or attorneys.

Mr. Twohig has worked on this since 1945; I worked on it just a few months. He started this case. Mr. Mahon, for example, did not come into it until 1948; Mr. Twohig kept at it like a bulldog and would not let go of anything he got, and would follow every conceivable lead—getting all the bank statements and the checks, tracing letters, obtaining records of telephone calls from the telephone company, and doing almost every conceivable thing to break this case, which no other Government agency was able to do. He, with the assistance of Paul Mahon, succeeded in doing it, and it meant a tremendous personal sacrifice to him and his family.

[fol. 3011] For instance, Mr. Lubben was down in Puerto Rico and did not want to come up and testify, and was a very unwilling witness. Mr. Twohig is a religious man, but went to Puerto Rico over Christmas. When he returned, we had to send him back there on New Year's Day, again taking him away from his family. He worked every day, even Saturdays and Sundays. I know the sacrifices he made, and I could go on for hours relating them.

Now secondly, there is Paul G. Mahon. He, too, since 1948, has worked on this day and night. His wife during the course of this trial was pregnant, and some of the children sick, but he still stayed on here at night and

Saturday and Sunday, doing anything that he possibly could do to advance the trial. He is the one who worked out the clever schemes involved in the consolidation and in the receivership. It was the scheme of a genius, and it took a genius to work it out. He broke through the receivership and the corporate swindle in this case.

Now Theodore Present, who is now in private practice. He also worked on this case since 1948, devoting day and night to it. His was the job of auditing and accounting to bring together the many, many things that the special agents developed. As one example of his devotion to public service, he left the Government on January 1st, because he needed more money to take care of his family. One child had cerebral palsy and requires much special treatment and equipment. He had to leave the Government, and he went into what will ultimately become an accounting partnership. But because he worked on this case and felt that he should not give it up, he said, "I will work free on this case, day and night, while it is on trial, so that [fol. 3012] it will be ultimately brought to a successful conclusion." And he did work on this case and in doing it gave up most of his tax season work, which normally represents the major part of an accountant's annual income. He was paid something less than he received as a revenue agent because we had not the money to pay him.

That is the kind of devotion to think of. Those are the three primarily responsible for this, but there are many others, and they represent the kind of public service that is never compensated by money; it can only be compensated by their knowledge that they have done what I think the whole country should recognize as a magnificent job.

STATEMENT BY THE COURT

The Court: I am very glad that you took the trouble, Mr. Wessel, to narrate their efforts. There just has been no occasion during the trial for me to express my own views, and the time of sentence is hardly that time. I withdrew some things I intended to say when talking to Mr. Giglio.

I have one way or another been concerned with such complicated proceedings and the unraveling of fact situations for twenty years. I do not know of any finer, abler, more imaginative and more thorough job that has been done. Who did what you cannot tell from this point of view.

I heard the case as it went in through Mr. Wessel—who, incidentally, I take this occasion to congratulate and commend for what I believe to be a splendid presentation.

To get back to Mr. Twohig, Mr. Mahon and Mr. Present and the others, I have been in government now for a long [fol. 3013] time in one capacity or another, but I never had the honor of any job which could be called a career job—so what I am about to say, can by no stretch be considered self-praising. When you study government, sooner or later you hear about the British civil service as a fine example. I should like to say from what I have seen of the State government in New York, and now in my relatively brief exposure to Federal government, and the dealings that I had on the other side of the fence, with men holding Federal office, that I do not think the civil service in this country need take its hat off to anyone, but that the career men who fill the posts in government are the most devoted group that one ever runs into. I know that financially they are unrewarded. Even in the cheaper and shallower aspects of prestige they are unrewarded,—only the people who see the substance and separate it from the chaff know the value of their service.

I heard Governor Dewey say that the State of New York is run by men in competitive civil-service positions whose salaries are between five and ten thousand dollars a year. I think that is equally true of the Federal government. Maybe the salary ranges have changed a little bit, but that is the group, the group that assumes the responsibility for policy, judgment, and decisions; and I have, as I say, very little concern with the shallower values that go with some other, more glamorous public offices.

I do not know how to thank these men, except to thank them. Incidentally, reading between the lines in this case, the fellows who held on with this prosecution and drove

it through I am sure did not have a completely easy time internally. When you get a long, tedious and important [fol. 3014] case there are always plenty of people along the way who can say, Drop it, or who will pick upon your inability to prove something on the instant to discontinue the prosecution. The men in public offices able to hold out against that misadvice are very little short of heroic.

So the best of luck to you, and the best of luck to Mr. Present. I am sorry he is not going to be with the Government any more, but he certainly did a great service here.

I do not know that there is any suggestion that these men have lost any progression because of the time they have taken on this case, and I think the Court owes an obligation to communicate with any person who has that view and explain the facts. And, Mr. Wessel, if you will let me know of anything like that, I will be glad to follow it up.

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[fol. 3015] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT 141

EATSUM FOOD PRODUCTS CO. LTD.

NET INCOME

Net Income Per Tax Return		$482,025.76
Additions:		
Cash Box Contents		140,000.00
		$622,025.76
Less:		
Salaries		
Ronald Stone	$13,500.	
Frank Loperfido	22,650.	
Roy Hankermeyer	12,250.	48,400.00
Net Income Corrected		$573,625.76

DISTRIBUTION OF NET INCOME

Per Return		Corrected	
William & Margherita Giglio	$101,123.88	William Giglio	$228,288.58
Frank & Dorina Livorsi	101,123.88	Frank Livorsi	228,288.58
David Lubben	99,620.88	David Lubben	117,048.60
Roy Hankermeyer	70,512.46		
Frank Loperfido	45,682.20		
Ronald Stone	63,962.46		
	$482,025.76		$573,625.76

[fol. 3016] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT 142

EATSUM FOOD PRODUCTS CO. LTD.

COMPUTATION OF SALARIES

FRANK LOPERFIDO

Salary Checks	$ 7,500.
Payment March 1946	5,000.
Payment April 1946	13,500.
	$26,000.
Credit for Advance	3,350.
Salary	$22,650.

RONALD STONE

Salary Checks	$ 5,700.
Payment Charged to Capital Account	10,000.
	$15,700.
Credit for Advance	2,200.
Salary	$13,500.

ROY HANKERMEYER

Salary Checks	$12,250.
Salary	$12,250.

[fol. 3017] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT 143

EATSUM FOOD PRODUCTS CO. LTD.

DISTRIBUTION TO DAVID LUBBEN

CREDITS

Capital Investment	$31,300.
Reserve for Taxes	37,000.
Excess Investment (May Profit)	13,485.31
Total Credits	$ 81,785.31

CHARGES

Payments of Income Tax	$ 33,316.03
D. Lubben Drawing Account	15,738.67
D. Lubben Special Drawing Account	45,523.37
Salary Checks	23,500.00
Value of Plant	80,755.84
	$198,833.91

Total Charges	$198,833.91
Total Investment	81,785.31
Total Distribution	$117,048.60

[fol. 3018] IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT 144

EATSUM FOOD PRODUCTS CO. LTD.

COMPUTATION OF VALUE OF PLANT

Basis of Plant June 1, 1945	$47,421.74
Reserve for Depreciation June 1, 1945	3,747.90
Net Value at June 1, 1945	43,673.84
Assets Acquired by Partnership	42,221.95
	85,895.79
Depreciation June 1, 1945–March 31, 1946	5,139.95
Basis of Plant	$80,755.84

[fol. 3019] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT 145

EATSUM FOOD PRODUCTS CO. LTD.

SCHEDULE OF LUBBEN'S DRAWING ACCOUNTS

			Charges	Credits
DAVID G. LUBBEN, SPECIAL				
October	31, 1945		$ 1,840.00	$
	31		50.73	
	31		2,958.12	
November	30		133.44	
December	31		2,605.61	
	31		14,153.77	
January	31, 1946		15,580.15	5.78
February	28		8,207.33	
	Balance	$45,523.37	$45,529.15	$ 5.78
DAVID G. LUBBEN, DRAWING				
June	30, 1945		59,600.00	
July	30,			25.45
September	30		4,100.00	
	30		2,397.08	
October	31		380.08	
November	30		6,981.99	2,500.00
	30		10,000.00	66,630.28
January	31, 1946		380.08	
	31		305.17	
	31		750.00	
	Balance	$15,738.67	$84,894.40	$69,155.73

[fol. 3020] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT 146

TAVERN FRUIT JUICE CO.

NET INCOME

Net Income Per Tax Return		$140,726.32
Additions:		
Closing Inventory	$72,321.17	
Experimental & Research Expense	32,780.93	105,102.10
Total		$245,828.42
Less:		
Purchases Not Claimed	$ 9,229.65	
Legal Expense	15,000.00	24,229.65
Net Income Corrected		$221,598.77

DISTRIBUTION OF NET INCOME

Per Return		Corrected	
William Giglio	$35,181.58	William Giglio	$110,799.39
Margherita Giglio	35,181.58	Frank Livorsi	110,799.38
Frank Livorsi	35,181.58		
Dorina Livorsi	35,181.58		
	$140,726.32		$221,598.77

[fol. 3021] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT 147

TAVERN FRUIT JUICE CO.

COMPUTATION OF CLOSING INVENTORY

SUGAR:		
The Nulomoline Company		$33,950.72
The National Sugar Refining Co.		10,362.95
Holloway Corporation		9,077.08
Sunhill Products Co.		1,301.17
Total		$54,691.92
BARRELS:		
Bayonne Barrel Company		$ 7,899.25
CHEMICALS:		
H. Hexter & Son		$ 1,750.
Stein, Hall & Co., Inc.		7,980.
Total		$ 9,730
SUMMARY		
Sugar	$54,691.92	
Barrels	7,899.25	
Chemicals	9,730.00	
	$72,321.17	

[fol. 3022] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT 148

TAVERN FRUIT JUICE CO.

PURCHASES NOT CLAIMED

SUGAR:

The Nulomoline Company

Invoice Number	Date	Amount
4285	Jan. 3, 1946	$1,536.89
4297	Jan. 3, 1946	1,547.12
4286	Jan. 3, 1946	1,524.27
4298	Jan. 3, 1946	1,549.62
4318	Jan. 4, 1946	1,538.43
4319	Jan. 4, 1946	1,533.32
		$9,229.65

[fol. 3023] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT 149

(CORRECTED)

ADDITIONAL CARS OF SYRUP SOLD

SUPPLIER—THE HUBINGER COMPANY

Car #	Weight	Premium	Overage
GATX 24401	94,640	.0875	$ 8,230.16*
GATX 10338	94,700	.0875	8,286.25
GATX 2147	95,840	.0875	8,386.00
GATX 4141	95,300	.0875	8,338.75
GATX 24688	95,080	.0875	8,319.50
			$41,560.66

Distribution

William Giglio	$20,780.33
Frank Livorsi	20,780.33
Total	$41,560.66

[* Per Records of General Confections, Inc.; Computation at .0875 = $8,281.00]

[fol. 3024] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT 150

(CORRECTED)

WILLIAM GIGLIO

Net Income per Return		$286,690.01
Eatsum Distribution Corrected	$228,288.58	
Per Tax Return	101,123.88	
Additional Income from Eatsum		127,164.70
Tavern Distribution Corrected	$110,799.39	
Per Tax Return	70,363.16	
Additional Income from Tavern		40,436.23
Share of Proceeds of 5 Cars of Syrup Sold		20,780.33
		$475,071.27
Less: Credit for Other Income Reported per Return		50,000.00
Net Income Corrected		$425,071.27
TAX		
Corrected	$340,959.62	
Per Return	232,978.73	
Deficiency	$107,980.89	

[fol. 3025] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT 151

(CORRECTED)

FRANK LIVORSI

Net Income per Return		$289,515.00
Eatsum Distribution Corrected	$228,288.58	
Per Tax Return	101,123.88	
Additional Income from Eatsum		127,164.70
Tavern Distribution Corrected	$110,799.38	
Per Tax Return	70,363.16	
Additional Income from Tavern		40,436.22
Share of Proceeds of 5 Cars of Syrup Sold		20,780.33
		$477,896.25
Less: Credit for Miscellaneous Income Reported per Return		50,000.00
Net Income Corrected		$427,896.25

TAX		
Corrected	$343,834.06	
Per Return	236,003.65	
Deficiency	$107,830.41	

[fol. 3026] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT 152

AMERICAN BRANDS CORP. & RELATED CORPORATIONS

NET INCOME

	Per Return	Corrected
American Brands Corp.	$342,462.97	$279,371.45
American Brands Wholesale Corp.	169,131.09	169,131.09
American Trucking & Forwarding Corp.	3,180.16	3,180.16
American Agar Corporation	*242,058.26*	*242,058.26*
American Sweets Corp.	*4,853.41*	*4,853.41*
Lawn International Corp.	*6,109.19*	*6,109.19*
Consolidated	$261,753.36	

[fol. 3027] TAX

	Per Return	Corrected
American Brands Corp.	$104,701.35	$106,161.15
American Brands Wholesale Corp.		64,269.81
American Trucking & Forwarding Corp.		667.83
American Agar Corporation		—
American Sweets Corp.		—
Lawn International Corp.		—
	$104,701.35	$171,098.79

Tax Corrected	$171,098.79
Per Return	104,701.35
Deficiency	$ 66,397.44

[fol. 3028] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT 153

EXTRACTS AND DATA TAKEN FROM MINUTES

STOCK BOOKS AND STOCK AND TRANSFER LEDGER

	American Brands Corp.	American Brands Wholesale Corp.	American Agar Corp.	American Sweets Corp.	America Truckin & Forwar ing Cor
STOCKHOLDERS—STOCK CERTIFICATE BOOK	Shares	Shares	Shares	Shares	Shares
William J. Giglio	500	500	700	No	500
Margherita Giglio	250	250		Certificates	250
Howard M. Lawn	250	250	300	Issued	250
STOCK & TRANSFER LEDGER					
Transfers	None	None	None	None	None
AUTHORIZED CAPITAL STOCK IN SHARES					
Common Stock	1000	1000	1000	1000	1000
DATE OF INCORPORATION	1/8/46	3/23/46	10/25/45	3/23/46	3/23/46
STATE OF INCORPORATION	New Jersey	New Jersey	New Jersey	New Jersey	New Jersey

[fol. 3029] FOOTNOTES

AMERICAN BRANDS CORP.

Minute book shows assignment of 6 shares of stock from the original incorporators to Frank Livorsi on 1/21/46.

Minute book refers to the following stockholders and shares held. Frank Livorsi 250; Dorina Livorsi 249; W. J. Giglio 250; Margherita Giglio 249; H. M. Lawn 1; Louis J. Roth 1.

AMERICAN BRANDS WHOLESALE CORP.

Minute book shows assignment of 3 shares of stock from the original incorporators to Louis J. Roth on 3/26/46.

AMERICAN SWEETS CORP.

Minute book shows assignment of 3 shares of stock from the original incorporators to Louis J. Roth on 3/26/46.

AMERICAN TRUCKING & FORWARDING CORP.

Minute book shows assignment of 3 shares of stock from the original incorporators to Louis J. Roth on 3/26/46.

[fol. 3030] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

GOVERNMENT'S EXHIBIT 154

NET INCOME PER TAXPAYERS' RETURNS

1946

WILLIAM GIGLIO	
Share of Tavern Partnership	$ 70,363.16
Share of Eatsum Partnership	101,123.88
Other Income	50,000.00
Salary American Brands Corp.	49,405.00
Salary American Brands Wholesale Corp.	16,047.97
FRANK LIVORSI	
Share of Tavern Partnership	70,363.16
Share of Eatsum Partnership	101,123.88
Miscellaneous Income	50,000.00
Salary American Brands Corp.	49,405.00
Salary American Brands Wholesale Corp.	16,047.96
AMERICAN BRANDS CORP.	
Consolidated Return	261,753.36
Total Net Income Reported	$835,633.37

TAX LIABILITY

	Per Return	Paid
William Giglio	$232,978.73	$ 8,000.00
Frank Livorsi	236,003.65	8,435.95
American Brands Corp. (Consolidated)	104,701.35	300.00
	$573,683.73	$16,735.95

[fol. 3031] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF MILTON R. WESSEL CERTIFYING NO IMPROPER USE MADE OF ALLEGEDLY UNLAWFULLY OBTAINED EVIDENCE DURING TRIAL OR OTHERWISE, ETC.

State of New York,
County of New York,
Southern District of New York—ss.:

MILTON R. WESSEL, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney and am in charge of the above-entitled matter. I am fully familiar with all the facts and prior proceedings herein.

2. This affidavit is submitted to the Court, together with other affidavits attached hereto, to certify to the Court that the assurances made by the Government in connection with the use of certain documents have been fully carried out.

3. Defendants moved for varied relief in April, 1954 alleging that records had been unconstitutionally obtained from them and had been used in obtaining the present indictment. These motions were denied.

4. In September, 1954 when the motions were argued, affidavits were submitted by the Government asserting that no use of the questioned evidence had been or would be made in this prosecution. On January 10, 1955 when the trial of this matter commenced before Hon. Lawrence [fol. 3032] E. Walsh, further affidavits to the same effect were submitted to the Court.

5. Throughout the trial of this case, I carefully analyzed every item of evidence used by the Government and am certain that none of the described material was used in any way.

6. None of the questioned evidence was used as direct evidence, on cross-examination, to refrsh a witnesses' recollection in preparation for or during the trial, as a lead to other evidence or in any other manner.

7. I have questioned each attorney and agent who participated in the trial of this case and each has assured me that none of the questioned evidence was improperly used by him.

8. Attached hereto are the affidavits of each person who participated in the trial of this case, similarly certifying that he has followed the instructions of the United States Attorney that no use may be made in this prosecution of evidence obtained in any way from defendants' testimony or production of partnership documents under subpoena of the 1952 Grand Juries.

(Sworn to March [illegible] 1955 by Milton R. Wessel)

[fol. 3033] In United States District Court for the Southern District of New York

Affidavit of Arnold C. Fraiman Certifying No Improper Use Made of Allegedly Unlawfully Obtained Evidence During Trial or Otherwise, Etc.

State of New York,
County of New York,
Southern District of New York—ss.:

Arnold C. Fraiman, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney for the Southern District of New York.

2. I hereby certify that I did not use any evidence obtained in any way from defendants' testimony or production of partnership documents under subpoena of the 1952 Grand Juries in the above prosecution.

(Sworn to March 1, 1955 by Arnold C. Fraiman)

[fol. 3034] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF IRA L. TILZER CERTIFYING NO IMPROPER USE MADE OF ALLEGEDLY UNLAWFULLY OBTAINED EVIDENCE DURING TRIAL OR OTHERWISE, ETC.

State of New York,
County of New York,
Southern District of New York—ss.:

IRA L. TILZER, being duly sworn, deposes and says:

1. I am an Attorney, Office of the Enforcement Counsel, Regional Counsel's Office, Treasury Department of the United States.

2. I hereby certify that I did not use any evidence obtained in any way from defendants' testimony or production of partnership documents under subpoena of the 1952 Grand Juries in the above prosecution.

(Sworn to March 4, 1955 by Ira L. Tilzer)

[fol. 3035] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF SAM KRANE CERTIFYING NO IMPROPER USE MADE OF ALLEGEDLY UNLAWFULLY OBTAINED EVIDENCE DURING TRIAL OR OTHERWISE, ETC.

State of Illinois,
County of Cook,
Northern District of Illinois—ss.:

SAM KRANE, being duly sworn, deposes and says:

1. I am a Special Agent of the Treasury Department of the United States.

2. I hereby certify that I did not use any evidence obtained in any way from defendants' testimony or production of partnership documents under subpoena of the 1952 Grand Juries in the above prosecution.

(Sworn to March 4, 1955 by Sam Krane)

[fol. 3036] In United States District Court for the Southern District of New York

Affidavit of James J. Twohig Certifying No Improper Use Made of Allegedly Unlawfully Obtained Evidence During Trial or Otherwise, Etc.

State of New York,
County of New York,
Southern District of New York—ss.:

James J. Twohig, being duly sworn, deposes and says:

1. I am a Special Agent of the Treasury Department of the United States.

2. I hereby certify that I did not use any evidence obtained in any way from defendants' testimony or production of partnership documents under subpoena of the 1952 Grand Juries in the above prosecution.

(Sworn to March 2, 1955 by James J. Twohig)

[fol. 3037] In United States District Court for the Southern District of New York

Affidavit of Paul G. Mahon Certifying No Improper Use Made of Allegedly Unlawfully Obtained Evidence During Trial or Otherwise, Etc.

State of New York,
County of New York,
Southern District of New York—ss.:

Paul G. Mahon, being duly sworn, deposes and says:

1. I am a Special Agent of the Treasury Department of the United States.

2. I hereby certify that I did not use any evidence obtained in any way from defendants' testimony or production of partnership documents under subpoena of the 1952 Grand Juries in the above prosecution.

(Sworn to March 2, 1955 by Paul G. Mahon)

[fol. 3038] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF JAMES A. KING CERTIFYING NO IMPROPER USE MADE OF ALLEGEDLY UNLAWFULLY OBTAINED EVIDENCE DURING TRIAL OR OTHERWISE, ETC.

State of New York,
County of New York,
Southern District of New York—ss.:

JAMES A. KING, being duly sworn, deposes and says:

1. I am a Special Agent of the Treasury Department of the United States.

2. I hereby certify that I did not use any evidence obtained in any way from defendants' testimony or production of partnership documents under subpoena of the 1952 Grand Juries in the above prosecution.

(Sworn to March 8, 1955 by James A. King)

[fol. 3039] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF DONALD HAFELE CERTIFYING NO IMPROPER USE MADE OF ALLEGEDLY UNLAWFULLY OBTAINED EVIDENCE DURING TRIAL OR OTHERWISE, ETC.

State of New York,
County of New York,
Southern District of New York—ss.:

DONALD HAFELE, being duly sworn, deposes and says:

1. I am a Special Agent of the Treasury Department.

2. I hereby certify that I did not use any evidence obtained in any way from defendants' testimony or production of partnership documents under subpoena of the 1952 Grand Juries in the above prosecution.

(Sworn to March 8, 1955 by Donald Hafele)

[fol. 3040] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF MILTON FICHTENHOLZ CERTIFYING NO IMPROPER USE MADE OF ALLEGEDLY UNLAWFULLY OBTAINED EVIDENCE DURING TRIAL OR OTHERWISE, ETC.

State of New York,
County of New York,
Southern District of New York—ss.:

MILTON FICHTENHOLZ, being duly sworn, deposes and says:

1. I am a Revenue Agent of the Treasury Department of the United States.

2. I hereby certify that I did not use any evidence obtained in any way from defendants' testimony or production of partnership documents under subpoena of the 1952 Grand Juries in the above prosecution.

(Sworn to March 4, 1955 by Milton Fichtenholz)

[fol. 3041] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF THEODORE PRESENT CERTIFYING NO IMPROPER USE MADE OF ALLEGEDLY UNLAWFULLY OBTAINED EVIDENCE DURING TRIAL OR OTHERWISE, ETC.

State of New York,
County of New York,
Southern District of New York—ss.:

THEODORE PRESENT, being duly sworn, deposes and says:

1. I was a Revenue Agent of the Treasury Department of the United States until January 1, 1955, and am now in private accounting practice.

2. I hereby certify that I did not use any evidence obtained in any way from defendants' testimony or production of partnership documents under subpoena of the 1952 Grand Juries in the above prosecution.

(Sworn to March 3, 1955 by Theodore Present)

[fol. 3042] In United States Court of Appeals for the Second Circuit

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United States of America, Plaintiff-Appellee,

v.

William J. Giglio and Frank S. Livorsi,
Defendants-Appellants.

Stipulation as to Record on Appeal—January 10, 1956

It is hereby stipulated, consented to and agreed by and between the undersigned counsel for the respective parties hereto, as follows:

1. The original affidavits of which the annexed affidavits are copies, were filed in the District Court for the Southern District of New York on January 11, 1955, and are referred to at pages 3a-3b of the stenographer's minutes of January 11, 1955.

2. The original affidavits not having been docketed by the District Court and not now being on file or a part of [fol. 3043] the record on appeal, the copies attached hereto shall be a part of the record on appeal.

Dated: New York, N. Y., January 10, 1956.

/s/ Paul W. Williams, United States Attorney for the Southern District of New York, Attorney for Plaintiff-Appellee.

/s/ Harold W. Wolfram, Attorney for Defendants-Appellants, Giglio and Livorsi.

/s/ Milton Pollack, Attorney for Defendant-Appellant Lawn.

[fol. 3044] In United States District Court
Southern District of New York

C 142-72

United States of America

v.

William Giglio, Frank Livorsi, Howard Lawn and American Brands Corporation, Defendants.

Affidavit of Milton R. Wessel Certifying No Improper Use Made of Allegedly Unlawfully Obtained Evidence in Preparation for Trial, Etc.

State of New York,
County of New York,
Southern District of New York—ss.:

Milton R. Wessel, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney and am in charge of the prosecution of the above-entitled matter. I am fully familiar with all the facts and prior proceedings herein.

2. This affidavit is submitted to the Court, together with certain other affidavits attached hereto, to certify to the Court that the assurances made by the Government in connection with the use of certain documents have been carried out.

[fol. 3045] 3. Defendants moved for varied relief in April 1954, alleging that certain records which had been unconstitutionally obtained from them were used in connection with the present indictment. These motions were denied.

4. Affidavits were submitted by the Government in opposition to these motions, asserting that no such use had been or would be made.

5. I have re-read both my affidavit of September 7, 1954, and the other affidavits submitted to the Court at that time in opposition to the said motions.

6. In the course of the preparation of this case for trial I have carefully analyzed all evidence, and I am

certain that no evidence which was obtained in any way from defendants' testimony or production of partnership documents under subpoena of the 1952 Grand Juries has been used either as evidence in itself, or to refresh the recollection of witnesses, or in any other way.

7. I have instructed each attorney and Agent participating in the preparation of this case and in the trial of this case that no such use is to be made at any time.

8. Attached hereto are the affidavits of all other persons who participated in the preparation of this case for trial or who will participate in the trial of the case in any respect.

(Sworn to January 7, 1955 by Milton R. Wessel)*

* The dates of verification of the affidavits printed at pages 100a-109a are approximated because no conformed copy can be located.

[fol. 3046] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF ARNOLD G. FRAIMAN CERTIFYING NO IMPROPER USE MADE OF ALLEGEDLY UNLAWFULLY OBTAINED EVIDENCE IN PREPARATION FOR TRIAL, ETC.

State of New York,
County of New York,
Southern District of New York—ss.:

ARNOLD G. FRAIMAN, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney for the Southern District of New York.

2. I have received instructions from Assistant United States Attorney Wessel that no evidence which was obtained in any way from defendants' testimony, or production of partnership documents under subpoena of the 1952 Grand Juries is to be used in this prosecution.

3. I have not used any such evidence and will not use any such testimony or records in this prosecution without order of Court.

(Sworn to January 7, 1955 by Arnold G. Fraiman)

[fol. 3047] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF IRA L. TILZER CERTIFYING NO IMPROPER USE MADE OF ALLEGEDLY UNLAWFULLY OBTAINED EVIDENCE IN PREPARATION FOR TRIAL, ETC.

State of New York,
County of New York,
Southern District of New York—ss.:

IRA L. TILZER, being duly sworn, deposes and says:

1. I am an Attorney, Office of the Enforcement Counsel, Regional Counsel's Office, Treasury Department of the United States.

2. I have received instructions from Assistant United States Attorney Wessel that no evidence which was obtained in any way from defendants' testimony, or production of partnership documents under subpoena of the 1952 Grand Juries is to be used in this prosecution.

3. I have not used any such evidence and will not use any such testimony or records in this prosecution without order of Court.

(Sworn to January 7, 1955 by Ira L. Tilzer)

[fol. 3048] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF SAMUEL KRANE CERTIFYING NO IMPROPER USE MADE OF ALLEGEDLY UNLAWFULLY OBTAINED EVIDENCE IN PREPARATION FOR TRIAL, ETC.

State of New York,
County of New York,
Southern District of New York—ss.:

SAMUEL KRANE, being duly sworn, deposes and says:

1. I am a Special Agent of the Treasury Department of the United States.

2. I have received instructions from Assistant United States Attorney Wessel that no evidence which was obtained in any way from defendants' testimony, or production of partnership documents under subpoena of the 1952 Grand Juries is to be used in this prosecution.

3. I have not used any such evidence and will not use any such testimony or records in this prosecution without order of Court.

(Sworn to January 7, 1955 by Samuel Krane)

[fol. 3049] In United States District Court for the Southern District of New York

Affidavit of James J. Twohig Certifying No Improper Use Made of Allegedly Unlawfully Obtained Evidence, in Preparation for Trial, Etc.

State of New York,
County of New York,
Southern District of New York—ss.:

James J. Twohig, being duly sworn, deposes and says:

1. I am a Special Agent of the Treasury Department of the United States.

2. I have received instructions from Assistant United States Attorney Wessel that no evidence which was obtained in any way from defendants' testimony, or production of partnership documents under subpoena of the 1952 Grand Juries is to be used in this prosecution.

3. I have not used any such evidence and will not use any such testimony or records in this prosecution without order of Court.

(Sworn to January 7, 1955 by James J. Twohig)

[fol. 3050] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF PAUL G. MAHON CERTIFYING NO IMPROPER USE MADE OF ALLEGEDLY UNLAWFULLY OBTAINED EVIDENCE IN PREPARATION FOR TRIAL, ETC.

State of New York,
County of New York,
Southern District of New York—ss.:

PAUL G. MAHON, being duly sworn, deposes and says:

1. I am a Special Agent of the Treasury Department of the United States.

2. I have received instructions from Assistant United States Attorney Wessel that no evidence which was obtained in any way from defendants' testimony, or production of partnership documents under subpoena of the 1952 Grand Juries is to be used in this prosecution.

3. I have not used any such evidence and will not use any such testimony or records in this prosecution without order of Court.

(Sworn to January 7, 1955 by Paul G. Mahon)

[fol. 3051] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF JAMES A. KING CERTIFYING NO IMPROPER USE MADE OF ALLEGEDLY UNLAWFULLY OBTAINED EVIDENCE IN PREPARATION FOR TRIAL, ETC.

State of New York,
County of New York,
Southern District of New York—ss.:

JAMES A. KING, being duly sworn, deposes and says:

1. I am a Special Agent of the Treasury Department of the United States.

2. I have received instructions from Assistant United States Attorney Wessel that no evidence which was obtained in any way from defendants' testimony, or production of partnership documents under subpoena of the 1952 Grand Juries is to be used in this prosecution.

3. I have not used any such evidence and will not use any such testimony or records in this prosecution without order of Court.

(Sworn to January 7, 1955 by James A. King)

[fol. 3052] In United States District Court for the Southern District of New York

Affidavit of Donald Hafele Certifying No Improper Use Made of Allegedly Unlawfully Obtained Evidence in Preparation for Trial, Etc.

State of New York,
County of New York,
Southern District of New York—ss.:

Donald Hafele, being duly sworn, deposes and says:

1. I am a Special Agent of the Treasury Department of the United States.

2. I have received instructions from Assistant United States Attorney Wessel that no evidence which was obtained in any way from defendants' testimony, or production of partnership documents under subpoena of the 1952 Grand Juries is to be used in this prosecution.

3. I have not used any such evidence and will not use any such testimony or records in this prosecution without order of Court.

(Sworn to January 7, 1955 by Donald Hafele)

[fol. 3053] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF MILTON FICHTENHOLZ CERTIFYING NO IMPROPER USE MADE OF ALLEGEDLY UNLAWFULLY OBTAINED EVIDENCE IN PREPARATION FOR TRIAL, ETC.

State of New York,
County of New York,
Southern District of New York—ss.:

MILTON FICHTENHOLZ, being duly sworn, deposes and says:

1. I am a Revenue Agent of the Treasury Department of the United States.

2. I have received instructions from Assistant United States Attorney Wessel that no evidence which was obtained in any way from defendants' testimony, or production of partnership documents under subpoena of the 1952 Grand Juries is to be used in this prosecution.

3. I have not used any such evidence and will not use any such testimony or records in this prosecution without order of Court.

(Sworn to January 7, 1955 by Milton Fichtenholz)

[fol. 3054] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF THEODORE PRESENT CERTIFYING NO IMPROPER USE MADE OF ALLEGEDLY UNLAWFULLY OBTAINED EVIDENCE IN PREPARATION FOR TRIAL, ETC.

State of New York,
County of New York,
Southern District of New York—ss.:

THEODORE PRESENT, being duly sworn, deposes and says:

1. I was a Revenue Agent of the Treasury Department of the United States until January 1, 1955, and am now in private accounting practice.

2. I have received instructions from Assistant United States Attorney Wessel that no evidence which was obtained in any way from defendants' testimony, or production of partnership documents under subpoena of the 1952 Grand Juries is to be used in this prosecution.

3. I have not used any such evidence and will not use any such testimony or records in this prosecution without order of Court.

(Sworn to January 7, 1955 by Theodore Present)

[fol. 3055] In United States Court of Appeals for the Second Circuit

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No. 249—October Term, 1955.

Argued March 6, 7, 1956

Docket No. 23620

United States of America, Plaintiff-Appellee,

v.

William Giglio, Frank Livorsi, and Howard Lawn, Defendants-Appellants,

Louis J. Roth and American Brands Corporation, Defendants.

Before: Clark, *Chief Judge*, Medina, *Circuit Judge*, and Galston, *District Judge*.

Appeal from the United States District Court for the Southern District of New York, Lawrence E. Walsh, *Judge*.

William Giglio, Frank Livorsi, and Howard Lawn appeal from convictions of violations of the Internal Revenue Laws and of conspiracy. Affirmed.

[fol. 3056] Milton R. Wessel, Sp. Asst. to U. S. Atty. for Southern Dist. of N. Y., New York City (Paul W. Williams, U. S. Atty., New York City, and Ira L. Tilzer, Tax Atty., Internal Revenue Service, Washington, D. C., on the brief), for plaintiff-appellee.

Solomon A. Klein, Brooklyn, N. Y. (Harold W. Wolfram, New York City, on the brief), for defendants-appellants Giglio and Livorsi.

Milton Pollack, New York City (Samuel N. Greenspoon, New York City, on the brief), for defendant-appellant Lawn.

OPINION—April 20, 1956

CLARK, *Chief Judge*:

Appellants Giglio, Livorsi, and Lawn appeal from judgments of conviction of violations of the Internal Revenue Laws and conspiracy entered after a lengthy trial to a jury. Appellants and one other defendant, Louis J. Roth, who pleaded guilty on all counts and who was a principal witness for the prosecution, were named as conspirators in one count of a ten-count indictment charging violations of 26 U. S. C. §§145(b) and 3793(b) and of 18 U. S. C. §371. In addition, Giglio was named in seven, Livorsi in three, Lawn in two, and Roth in eight substantive counts. The jury found each of the three guilty as charged. A fifth defendant named in the conspiracy count, American Brands Corporation, was eliminated by dismissal of the indictment after the jury failed to report as to it. Judge Walsh sentenced Giglio and Livorsi to a total of fifteen years of imprisonment on the various counts on which they were convicted, while he gave Lawn a total of a year and a day.

The conspiracy here disclosed involved attempts by a variety of means to evade assessment and payment of [fol. 3057] federal income taxes on large amounts of income earned in the World War II black market in sugar. The individual and corporate taxes evaded for the calendar year 1946 alone amounted to more than $800,000. Generally three means of evasion of tax assessment were used: (1) the fraudulent allocation of income among the various con-

panies and individuals in the conspiracy, (2) the fraudulent overstatement of expenses, and (3) the failure to disclose income (a technique very infrequently resorted to by these defendants). Further, defendants attempted to defeat collection of taxes through the concealment of the individual assets of Giglio and Livorsi and the misappropriation, conversion, and diversion of corporate assets. The testimony adduced amply sustained the charge.

Giglio and Livorsi were the central figures in the conspiracy. It was they who profited so royally as equal partners in the fabulous proceeds of the wartime black market. And it was they who procured the services of Roth, an accountant, to assist them in protecting their ill-gotten gains from tax claims. Lawn, a lawyer, had been Chief of the Criminal Division of the United States Attorney's Office for the District of New Jersey before entering their employ. He participated in much of the planning of the conspiracy for evasion of taxes by Giglio-Livorsi enterprises. He held executive positions in some of the participating companies; and, although his beneficial stock interest was small, he, like Roth, received substantial compensation for his services.

It is neither necessary nor feasible to describe here all the details of the multifarious techniques of tax evasion employed in the furtherance of this conspiracy, but sufficient facts should be set forth to show the magnitude and ingenuity of the operation. In April, 1945, the Tavern Fruit Juice Company was organized as a partnership. Giglio and Livorsi, the two real partners, also listed their wives [fol. 3058] as partners, though the latter contributed no capital to the enterprise. The information return of Tavern partnership falsely listed the wives as partners, even though Giglio and Livorsi later picked up the wives' supposed distributive shares on their own personal tax returns.[1]

[1] In this connection the witness Roth was asked the following question by the prosecutor: "Well, if you filed an individual return for Mr. Giglio and Mr. Livorsi, picking up those figures, why didn't you change the partnership information return so that it wouldn't indicate that the wives were partners?" His reply was: "The reason I didn't file—the reason I picked up the income of the wives on the individual husbands' tax return, these taxes, the tax lia-

About a month after Tavern was organized, a second partnership, Eatsum Food Products Co., Ltd., was launched. The true partnership interest at the time of formation in this enterprise was as follows: Giglio, 25%; Livorsi, 25%; and Lubben (a key government witness at the trial below), 50%. But a partnership information return for Eatsum was filed showing several dummy partners, including the wives of Giglio and Livorsi. The wives' income was in fact picked up on the husbands' individual returns. Nine months after its formation the Eatsum partnership agreement was modified, Lubben agreeing to accept about $117,000 as his distributive share of the partnership profits in return for the right to start a separate business and Giglio agreeing to pay the taxes on Lubben's share.

Of the two partnerships, during the first nine months of operation Eatsum alone earned almost three quarters of a million dollars. In order further to reduce taxes the conspirators set up a series of corporations, each bearing in some combination the name "American." The purpose of the corporations was to drain off the profits of Eatsum [fol. 3059] through the use of fraudulent invoices. The corporations were then to be dissolved before taxes fell due, and no income would be reported. The important corporations themselves were financially successful. So, in order again fraudulently to minimize taxes, Giglio and Roth procured the filing in the name of American Brands Corporation of a consolidated return covering the associated corporations, even though they knew that the parent-subsidiary relationship required by statute did not exist.

As thus indicated, appellants rarely resorted to an actual failure to report income. Roth's testimony, however, disclosed one illuminating instance in which such a failure apparently did take place. Part of the Eatsum operation involved the purchase and sale of corn and corn syrup.

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bility, the tax that was due, there was no money to pay, and it was never intended at that time to pay it; and in order to avoid the women having trouble with the Tax Department, we picked up the wives' income on the husbands' tax returns, so that all the trouble would accrue to the husbands."

with black market price overages being paid and received in cash passing through a cash box kept in the Eatsum office. Over $400,000 in cash passed through the cash box in the course of the corn syrup operations, resulting in a profit to Eatsum of about $140,000. Apart from an item of $50,000 of "Other Income" entered on both Livorsi's and Giglio's return, the cash box profit was not reported.

Another device used for the evasion of tax assessment consisted of fraudulent deductions for fictitious expenses and purchases. Along similar lines $63,091.52 in Tavern closing inventory was not reported, thereby fraudulently reducing the reported income of Tavern and shifting the inventory to American Brands, where it would not be reported until a corporation return was filed at a later date.

In addition to their efforts to defeat the imposition of full tax liability, appellants sought in a number of ways to delay, hinder, and prevent the collection of those taxes for which they admitted liability. They accomplished this result by filing late returns, by failure to withhold taxes as required by law, by filing false estimated personal tax returns, by filing false tentative corporate returns, by [fol. 3060] filing returns in the wrong district, by filing false returns for certain third persons in order to obviate the necessity of disclosing certain "cash box" receipts by Eatsum, and possibly also by filing an inaccurate carry-back loss claim and by the erroneous reporting by Giglio and Livorsi of $50,000 of "other income." Upon the filing of all tax returns here relevant on September 15, 1947, the conspirators made an extensive effort to convert leviable assets to cash. A particularly colorful incident in this process was the sale of the Livorsi estate in New Jersey. Livorsi received a check for $64,335.49 in payment for his equity in this property, which he subsequently cashed at the Merchants Trust Company in Red Bank, New Jersey. He left the bank with the entire amount in currency stuffed in his trousers' pockets.

Similarly, four days before the filing of tax returns, with the assistance of Lawn; Giglio transferred his New Jersey estate to Roth, even though Giglio continued to live in it. Four days after tax returns were filed a $15,000 interest in the Van Dyck Industrial Corporation held in

Giglio's name was sold, the proceeds going to Roth's special bank account and thence into the American Brands Corporation; it was never used to satisfy the tax liability of the corporation. Again in September, 1947, there was a sale of the Manhattan offices of the various enterprises for $10,000; but Roth had no knowledge of this money's being used to pay taxes. Before and after the filing of returns the conspirators withdrew large amounts of cash from the various "American" corporations, charging off these withdrawals to selling or other expense. The corporations went into state receivership in New Jersey in late 1947, and loans in comparatively large amounts owed by various of the conspirators to the corporations were concealed through falsification of the books. Further, as a result of the receivership, corporate assets were sold at [fol. 3064] a sacrifice and the proceeds were not applied to discharge the federal income tax liability. One of the most substantial physical assets was the equipment in a plant in New Jersey. Years after the disposal of this asset in receivership, Giglio continued to operate at the plant. There was evidence of concealment and destruction of records, threats to potential witnesses,[1] improper influence and

[1] David G. Lubben, at one time a partner of Giglio and Livorsi, testified on direct examination as follows:

"Q. You also said in this conversation that you had previously been told to keep your mouth shut. When was that?

A. I was told by Mr. Giglio to stay away from 253 [Broadway (the New York headquarters of special Treasury agents)] and to keep my mouth shut, that everything would work out all right. I was also told by Mr. Roth if I ever opened my mouth I would find myself at the bottom of the Hudson River in a cement box."

Bernard Bereu, a certified public accountant, testified on direct examination:

"Mr. Giglio was in my private office, explaining to me—perhaps I will put it directly: Mr. Giglio said to me that these work papers were being destroyed because of his—because, as he said, he wanted to know that his partnership affairs were kept within his control and that no outsider knew anything about them.

"He then said to me, 'We have ways of taking care'—and this is in substance, because this happened ten years ago, or nine years ago—in substance he said, we have ways of taking care of any man who talks about our affairs out of turn."

bribery, receivership and bankruptcy proceedings tinged with fraud, and subornation of perjury.

The *admitted* tax liability for the year 1946 of Giglio, Livorsi, and American Brands Corporation according to their filed returns was $573,683.73. The total tax paid was $16,735.95. This astronomic discrepancy (which is exclusive of falsification of the returns themselves), when viewed in connection with the activities outlined above, demonstrates why there was no reasonable doubt of the guilt of these conspirators. This is quite obviously true as to Giglio, the active manager of the enterprises, and as to Livorsi, his equal partner, who, although not so active [fol. 3062] as Giglio in the routine operation of the businesses, nonetheless knew of and approved the major conspiratorial acts. So Livorsi, who in direct furtherance of the conspiracy demanded and carried away from the Red Bank, New Jersey, bank over $64,000 in cash received for his New Jersey estate, was clearly anything but ignorant of the fraudulent character of other activities from which he thus handsomely profited.

As for Lawn, although he did not partake of the fruits of the conspiracy on the scale of Giglio and Livorsi, there is ample evidence to establish his guilt as charged. A significant part of his value to the conspiracy was his alleged familiarity with certain government officials and his purported ability thereby to ward off prosecution. He was the legal adviser to Giglio and Livorsi, and he participated in the planning and execution of a number of the schemes for tax evasion. For a person of his admitted legal astuteness to deny knowledge of the fraudulent transactions which proliferated around him is wholly amazing. He seems to have been particularly active in the formation of the "American" corporations, the concealment of Giglio's assets, and the arrangement of the New Jersey receivership; but of course his culpability is by no means limited to these phases of the developing scheme. He served as an officer or a director of several of the enterprises involved, and he received ample compensation for his services rendered in furtherance of the conspiracy.

Against this background so conclusively establishing the guilt of these appellants, numerous assignments of error

are for the most part entirely insubstantial and in no event present difficulty. Primarily appellants allege an invasion of their constitutional rights through the use of evidence obtained in violation of their privilege against self-incrimination. An indictment found in 1952 against these same defendants had been dismissed by Judge Goddard, who [fol. 3063] held that defendants' testimony and production of partnership records before a grand jury constituted a violation of their privileges against self-incrimination because at the time of the grand jury hearings these defendants were also defendants in pending criminal informations and were not advised on the record of their rights. *United States* v. *Lawn*, D. C. S. D. N. Y., 115 F. Supp. 674.[3] In 1953 the indictment in the present case, similar to, but not identical with, the 1952 indictment, was found. Defendants moved to dismiss the 1953 indictment on grounds that it was tainted with the same alleged illegally obtained evidence; to suppress evidence, leads, and clues derived from the tainted source; to direct a hearing to ascertain the scope of the suppression order; to direct that the minutes of the grand jury proceedings leading to the 1953 indictment be made available to defendants; and to direct return of the books and papers covered by Judge Goddard's order. Except for a direction of return of these books and papers, Judge Palmieri denied the motion in a reasoned opinion. *United States* v. *Giglio*, D. C. S. D. N. Y., 16 F. R. D. 268. At the trial, Judge Walsh, relying on Judge Palmieri's opinion and the reasoning incorporated therein, denied similar motions.

It was a proper exercise of discretion for the judges to rely upon the detailed affidavits of government attorneys and investigators setting forth the sources of evidence used in obtaining the 1953 indictment and demonstrating that it was not based upon the alleged illegally obtained material. The mere fact that Judge Goddard dismissed the 1952 indictment because of the use of allegedly illegal

[3] The government's appeal was dismissed as not timely filed, United States v. Roth, 2 Cir., 208 F. 2d 467; but, as the two opinions in United States v. Scully, 2 Cir., 225 F. 2d 113, show, the legal problem is still open before us.

evidence did not create a requirement as a matter of law [fol. 3064] for cross-examination of government witnesses and examination of government documents and grand jury minutes; and particularly is this so in the face of the strong adverse showing made by the affidavits of the prosecution. See *Nardone* v. *United States*, 308 U. S. 338; *Goldstein* v. *United States*, 316 U. S. 114, affirming *United States* v. *Goldstein*, 2 Cir., 120 F. 2d 485; *Lapides* v. *United States*, 2 Cir., 215 F. 2d 253; *United States* v. *Flynn*, D. C. S. D. N. Y., 103 F. Supp. 925. Under the circumstances here presented, the decision not to accord a full dress hearing upon oral testimony, together with disclosure of the grand jury minutes, was within the sound discretion of the court. See *Carrado* v. *United States*; D. C. Cir., 210 F. 2d 712, certiorari denied 347 U. S. 1018; *United States* v. *Foster*, D. C. S. D. N. Y., 80 F. Supp. 479.

Moreover, this is a case of great complexity developed during years of investigation. Sufficient evidence had been adduced even by 1950 for the case to become the subject of several days' testimony before the Kefauver Committee, and criminal informations were filed shortly thereafter; investigation and development of evidence continued after that time. If it be conceded that some additional evidence tainted with unconstitutionality may have entered into the finding of the 1952 indictment, it does not follow that the 1953 indictment was not based exclusively upon the massive evidence not so tainted. In the face of the government's detailed affidavits, appellants have clearly failed to sustain their burden of proving the contrary.

As to the further contention that the so-called "tainted" evidence may have been used at the trial itself (in contrast to its use in procuring the indictment), it is clear that appellants had a right of full cross-examination during the trial as to the sources of government exhibits and that they exercised this right on a number of occasions. On defendants' motion to dismiss at the conclusion of the govern- [fol. 3065] ment's case, Judge Walsh found nothing in the record of trial suggesting any use of illegal clues. We see no basis for contravening this finding.

Lawn makes strident objection to the introduction of government Exhibit 61A-B—a photostatic copy of a check

payable to Lawn and the check-stub page corresponding thereto, bearing grand jury markings and allegedly elicited before the 1952 grand jury in violation of Lawn's constitutional privilege. But before introduction at the trial this evidence was the subject of preliminary questioning by Lawn's able and experienced trial counsel (now deceased) who finally interposed "no objection" to its admission. Further, on this appeal the government offers to prove that other copies of the same documents were in its possession months before the 1952 proceedings and that these "untainted" copies could have been easily substituted at trial if the discrepancy had been pointed out by objection of defense counsel. Lawn therefore suffered no harm whatsoever and has obviously waived his objection.

Appellants further object to various consequences of Judge Walsh's action in cautiously removing from the consideration of the jury the question of the "distributive shares" from the Eatsum partnership. In this regard the contention of the government was in essence that the distributive share of the Giglio-Livorsi group had been increased from its original 50 per cent by reason of Lubben's agreement of March, 1946, to accept $117,000 in lieu of his original share, and that, therefore, the 1946 personal returns of Giglio and Livorsi correspondingly understated their income. Appellants on the other hand argued that Lubben was charged with the full 50 per cent fixed by the original partnership agreement, and that the taxable share of the Giglio-Livorsi group could not therefore exceed 50 per cent. In order to avoid this confusing problem in tax law, the judge instructed the jury to disregard alleged [fol. 3066] understatement of income from Eatsum in considering the counts charging the falsification of individual returns. Since, however, there was evidence of understatement of income from sources other than Eatsum, the verdict on these counts must stand. The charge was not misleading.

In cross-examination of a government witness friendly to appellants, defense counsel elicited testimony that "Mr. Giglio was well regarded in the [Long Branch] area." Defense counsel had been previously informed by the court that his question went beyond the scope of the direct examination. On redirect examination the prosecutor asked

the witness whether or not his opinion of Giglio's reputation would have been affected by knowledge of Giglio's arrest in Detroit. Judge Walsh sustained an objection to the question and instructed the jury to disregard it, although he stated that he would rule the other way if the prosecutor insisted. Since defense counsel deliberately opened the door to this line of questioning, since the prosecutor's question was in apparent good faith, and since in any event the jury was instructed to disregard the question, there was no error. See *Myres* v. *United States*, 8 Cir., 174 F. 2d 329, certiorari denied 338 U. S. 849.

There is no occasion to discuss the numerous other assignments of error—none of which showed merit. We are constrained to say that the presentation of this appeal was marred by a virulent attack, particularly on behalf of appellant Lawn, upon the integrity and the ethics of the prosecutor. An examination of the record shows that this was utterly unwarranted. On the contrary, he and his associates conducted the prosecution with devotion, responsibility, and rare skill against experienced and determined defense. We do not think that even the exigencies of the defendants' case justified or excused this attack. The trial was fair and the result proper, if not inevitable.

Affirmed.

[fol. 3067] In United States Court of Appeals
for the Second Circuit

Present: Hon. Charles E. Clark, *Chief Judge*, Hon. Harold R. Medina, *Circuit Judge*, Hon. Clarence G. Galston, *District Judge*.

United States of America, Plaintiff-Appellee

v.

William Giglio, Frank Livorsi and
Howard Lawn, Defendants-Appellants

Judgment—April 20, 1956

Appeal from the United States District Court for the

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

/s/ A. Daniel Fusaro, Clerk

[fol. 3068] [File endorsement omitted]

[fol. 3069] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

No. C 142-72

UNITED STATES OF AMERICA

v.

WILLIAM GIGLIO

On this 11th day of March, 1955 came the attorney for the government and the defendant appeared in person and[1] by counsel

JUDGMENT AND COMMITMENT—March 11, 1955

It Is Adjudged that the defendant has been convicted upon his plea of[2] not guilty and a verdict of guilty by a jury of the offense of unlawfully aid and assist in preparation of false income tax returns; evasion of income taxes due the U. S. by filing false income tax returns; wilfully and

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[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

knowingly attempt to defeat and evade payment of a large part of taxes due and owing by him and by American Brands Corporation, in that he did conceal assets of himself and did misappropriate, convert and divert assets of American Brands Corporation to his own use and benefit; conspiracy to violate T 26 Sec 145b USC. T 26 Sec. 3793-(b)(1) USC. T 26 Sec 145b USC. T 26, Sec 145b & T 18 Sec. 2 USC. T 18 Sec. 371 USC. as charged in counts 1-2-3-4-5-7-9-10 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or has authorized representative for imprisonment for a period of[1]

Five Years on count ten

Five Years on count one to run consecutively to and begin after sentence on count 10

Five Years on each of counts 2-5-7 to run concurrently with each other and concurrently with sentence on count one.

Five Years on count three to run consecutively to and begin after sentence on count one.

Five Years on counts 4 and 9 to run concurrently with each other and concurrently with sentence on count three.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Lawrence E. Walsh, United States District Judge.

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[1] Insert "in count(s) number _____" if required.

[2] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

[fol. 3070] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

No. C 142-72

UNITED STATES OF AMERICA

v.

FRANK LIVORSI

On this 11th day of March, 1955 came the attorney for the government and the defendant appeared in person and[1] by counsel

JUDGMENT AND COMMITMENT—March 11, 1955

It Is Adjudged that the defendant has been convicted upon his plea of[2] not guilty and a verdict of guilty by a jury of the offense of evasion of income taxes due the U. S. by filing false income tax returns; wilfully and knowingly attempt to defeat and evade the payment of a large part of taxes due and owing by him and by American Brands Corporation, in that he did conceal assets of himself and did misappropriate convert and divert assets of American Brands Corporation to his own use and benefit; conspiracy to violate T. 26, Sec. 145b USC. (T 26 Sec. 145b USC. T 26 Sec 145b and T. 18 Sec 2 USC. T. 18 Sec 371 USC) as charged[3] in counts 6-8-9-10 and the court having asked the defendant whether he has anything to say why

[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

[3] Insert "in count(s) number " if required.

judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[1]

Five Years on count ten.
Five Years on count six to run consecutively to and begin after sentence on count ten.
Five Years on count eight to run concurrently with sentence on count six.
Five Years on count nine to run consecutively to and begin after sentence on count six.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Lawrence E. Walsh, United States District Judge.

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[1] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

[fol. 3071] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,

—against—

WILLIAM GIGLIO, FRANK LIVORSI and HOWARD LAWN, Defendants-Appellants, LOUIS J. ROTH and AMERICAN BRANDS CORPORATION, Defendants.

PETITION FOR REHEARING—filed April 26, 1956

To the Honorable Chief Judge and Associate Judges of the Court of Appeals, Second Circuit:

Howard Lawn hereby petitions for rehearing. This Court's decision was made on April 20, 1956.

I.

Tainted evidence bottoms the conviction of Howard Lawn. Exhibits 61A-B. It is this tainted evidence which is in the record. The alleged non-tainted substitutes are *dehors* the record, even assuming that the alleged substitutes are non-tainted.

Lawn asserts that until January, 1956, or just before this appeal was argued the prosecutor's office did not have in its own actual possession or custody any copy of Exhibits 61A-[fol. 3072] B other than the tainted exhibits themselves. At the trial, this prosecutor's office did not have any alternate copy in his files, custody or possession.

The tainted exhibits were used on trial as the only ones then at hand. All copies carry the same stigma.

The order of Judge Goddard, before the trial, requiring the prosecution to return to Lawn the tainted evidence was not observed. Such evidence was inadmissible, even if Lawn had had the opportunity of full cross-examination during the trial as to the source of government exhibits and even

if he had exercised such right. The law strikes down the use of illegally obtained evidence.

There is no legal basis for a finding that this constitutional objection was waived. Nothing in the record shows that Mr. Stryker was aware that the exhibits introduced in evidence by the prosecution were the very papers which had been exacted by the 1952 grand jury, rendering them inadmissible. Any notion of waiver of the objection obviously must be established by an affirmative showing which was not made by the government that Mr. Stryker appreciated and consciously elected, on Lawn's behalf, to ignore the tainted character of the evidence. Mr. Stryker was vigorously contending for a hearing to establish unconstitutional use of evidence and nothing indicates that he receded as to Exhibits 61A-B. Mr. Stryker over and over demanded the right to examine those who would know the sources of these exhibits (i.e.) the prosecutor's staff and others. There can be no inference or finding of waiver in the face of these demands, and the denial thereof by the Trial Judge which denial was on the basis of sworn representations that no such tainted evidence was used.

The preliminary examination by Mr. Stryker on the trial with respect to the exhibits, occurred during the testimony of the government's witness, Roth (1022). This examination related not to the source of the exhibit or its use before the 1952 grand jury but to identification of matter appearing thereon, such as signatures. Roth was not in a position [fol. 3073] to know or be examined on whether the documents were those which Lawn had produced to the grand jury in consequence of which they were tainted.

This Court's decision relies in part on an offer of proof made on the appeal. This Court's opinion notes that:

> "Further, on this appeal the government offers to prove that other copies of the same documents were in its possession months before the 1952 proceedings and that these 'untainted' copies could have been easily substituted at trial if the discrepancy had been pointed out by objection of defense counsel. Lawn therefore suffered no harm whatsoever and has obviously waived his objection." (1283)

The proofs so offered cannot be substantiated within or outside the record. Nothing in the record establishes that this prosecutor's office had "in its possession" copies which were "untainted" or which were in this prosecutor's files or were at hand to be used by this prosecutor at the trial.

We have endeavored since the issue was discovered in January 1956 to have this prosecutor's office reveal to us the circumstances and the facts concerning the existence and custody of alleged additional "untainted copies." We made such inquiry before making any statement whatsoever in Lawn's brief with respect to the trial use of tainted copies.

We now contend and Lawn asks for an opportunity to prove that the fact is that the United States Government may have had in its possession in one of its divisional offices distant from the scene of the trial, in the State of New Jersey, a copy of Exhibits 61A-B. That, this alleged copy was apparently in the office of the United States Attorney for New Jersey, who had no connection or concern with this prosecution.

That, the New Jersey copy of Exhibits 61A-B was *for the first time* obtained by this prosecutor's office, in this District, in January 1956; or long after the trial of this case which [fol. 3074] occurred in 1955. We draw this inference from the prosecutor's oral statement on argument before this Court that the copy which the prosecutor offered on the appeal to this Court *was made in January 1956.*

The circumstances under which the New Jersey Attorney obtained his alleged copy are not proved or revealed in this record. Nor does this record show whether or not his copy was constitutionally available for use in any prosecution against Lawn either in New Jersey or in New York or anywhere else. Seemingly it was obtained in New Jersey as an incident to grand jury proceedings in New Jersey pending against Lawn in 1952.

Consequently: This prosecutor's office did not at the time of this trial have in its custody or its own files, did not have in its own "possession", any copy of 61A-B except the tainted copy which under order of Goddard, *D.J.*, was to be returned to Lawn before the trial and which was inadmissible and unusable for any purpose on the trial.

A constitutional question is involved. A mistaken use is as constitutionally bad as any other use of a tainted document. Accordingly, proof should be taken on remand to the District Court to determine with respect to the government's offer of proof on appeal, whether

1. This prosecutor's office did on the trial in fact have in its custody or in its "possession" any copy of 61A-B other than the tainted copy actually used on the trial which stemmed from the 1952 grand jury proceedings; and
2. Whether the alleged New Jersey copy, if that is the one on which this prosecution relies and refers to as being "in its [the government's] possession," was itself constitutionally tainted and unusable.

Unless such proof is taken the record in this case remains with only tainted, inadmissible, unconstitutional evidence. [fol. 3075] After the prosecution's argument of the appeal, the following letter was sent to the prosecutor to ascertain whether this prosecutor's office did in fact have in its files and readily available for easy substitution and use at the trial any copies other than the tainted copy of the exhibits used. Our letter and the prosecutor's reply thereto are set forth hereinafter in full and are as follows:

On the letterhead of

MILTON POLLACK

March 13, 1956.

Honorable Paul Williams,
United States Attorney,
United States Court House,
Foley Square,
New York, N. Y.

re United States v. Lawn

Dear Mr. Williams:

Will you please ascertain and let me know whether the New York U.S. Attorney's office had in its physical possession a copy of the $15,000 check to Howard Lawn and the

Tavern check stub book entry with relation to the check, exclusive of the photostatic copy made by the New York U.S. Attorney's office on July 15, 1952, in connection with the grand jury proceedings pending on that date,

(a) At the time of the 1953 grand jury proceedings against Howard Lawn;

(b) In 1955 at the time of the trial of Howard Lawn in the Southern District.

Will you also please ascertain and let me know whether the 1953 grand jury which indicted Howard Lawn had placed before it the photostatic copies of the $15,000 check [fol. 3076] and the check stub book mentioned, and which were made by the New York U.S. Attorney's office on July 15, 1952, from the originals produced by Howard Lawn to the grand jury on that date.

Will you also please ascertain and let me know whether the photostatic copy of the check exhibited to the United States Court of Appeals on argument of the appeal was made in January 1956, and when the New York U.S. Attorney's office obtained for the first time the copy from which the photostat proffered on the argument was made.

I draw your attention to the fact that at page 54 of the government's brief on appe... the statement is made that

"These documents had been in the government's possession for several months prior to Lawn's appearance before the grand jury."

I took this to mean, I think quite properly, a representation that the government referred to was the New York U.S. Attorney's office and not some other and distant arm of the United States government.

I also call attention to the fact that on page 64 it is repeated.

"Again, these very documents had been voluntarily produced months before, and copies were in the government's possession. Had Lawn objected to the use of these particular copies the others could easily have been substituted and he and counsel undoubtedly knew it."

Again I took this to be a representation that the possession referred to was the physical possession of the New York U.S. Attorney's office.

The reason for these requests is that your brief on appeal in the first footnote to page 64 recites:

> "If the Court does not find waiver by appellants, the Court is requested to consider this statement as an offer of proof by the government."

[fol. 3077] Furthermore, both Judge Galston and later I asked your counsel at the time of argument of the appeal whether the minutes of the 1953 grand jury proceeding disclose that the check used before the 1953 grand jury was the actual photostat obtained by the New York U.S. Attorney's office on July 15, 1952, and used on trial as Exhibit 61A. In each instance your representative stated that he did not know.

Your answers to these inquiries should clarify ambiguities in your brief which as they stand now could be misconstrued to the prejudice of Howard Lawn. Clarification is necessitated in the interests of justice.

Respectfully yours,

MILTON POLLACK

On the letterhead of

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY

March 26, 1956

Milton Pollack, Esq.
111 Broadway
New York 6, N.Y.

Re: United States v. Lawn

Dear Mr. Pollack:

This will acknowledge receipt of your letter of March 13, 1956 in connection with the above entitled appeal.

The references in the Government's brief on appeal to certain documents in possession of the government were [fol. 3078] references to the United States Government, and not to any branch or subdivision thereof. No representation was made or intended with regard to the specific location or custody of such documents.

Very truly yours,

PAUL W. WILLIAMS,
United States Attorney
By Arthur H. Christy
ARTHUR H. CHRISTY,
Chief, Criminal Division

We draw to this Court's attention the case of *MacDonald v. United States*, 335 U. S. 451 at 456 (1948), which deals with property that should have been returned. The Supreme Court appositely points out that a return of the tainted documents as ordered by the Court would have avoided such a situation as here exists "because it would not have been available for use at the trial."

We also draw attention to *Silverthorne Lumber Co. v. U. S.*, 251 U. S. 385, at pp. 391-2 (1920), and to *McGinnis v. U. S.*, 227 F. 2d 598 (1 Cir. 1955).

The defendants herein requested a hearing in the Trial Court to take proof as to the use of tainted evidence in this prosecution. The government on appeal herein requested a hearing to show that it had possession of untainted copies. It is respectfully suggested that possession by the overall United States Government in a distant divisional office other than the prosecuting office does not satisfy or support the offer on appeal to prove that on the trial the prosecutor had untainted copies readily exchangeable for the tainted copies actually used.

Whether or not untainted copies were in the possession of some other and distant branch of the government is immaterial. Tainted copies were in fact used.

There is also grave doubt as to the admissibility of such other alleged copies since the originals are tainted and the best evidence rule bars copies thereof.

[fol. 3079] II.

This Court's opinion does not specifically decide the question raised under Point II of Lawn's brief and in view of its importance in the tax field and the decisions of the Fifth Circuit, we respectfully ask for a specific treatment thereof on rehearing. This will then be an express guide hereafter.

To save the Court the trouble of referring to our briefs on the appeal we will restate here the argument on which we seek this Court's express ruling.

Counts Seven and Nine of the indictment proceed on the theory that the defendants Giglio and American Brands Corporation properly and accurately reported their income, deductions and tax payable. The indictments further proceed on the theory that with the aid of Lawn these two defendants wilfully thwarted collection of such reported tax.

In short, it is the government's contention here that Section 145(b) applies to failure to pay situations.

This theory of a felony under Section 145(b) has been rejected in the only two other applicable cases which we have been able to find. These cases are *Clay* v. *United States*, 218 F. 2d 483, 485 (5 Cir. 1955), and *Jones* v. *United States*, 164 F. 2d 398 (5 Cir. 1947).

In the *Clay* case the Court, in dismissing an indictment like the one at bar, and in construing an identically worded statute, pointed out that the evidence was sufficient for a finding that there was liability for and wilful failure to pay the tax. Nonetheless, it stated appositely:

> "The record evidences an attempt by appellee to test this theory that it can 'make out a felony violation * * * in a "failure to pay" situation.' The Government concedes, as it must, that allegation and proof of liability for its occupational tax, coupled with a failure to pay it, is not sufficient to constitute a felony violation, but in addition, there must be some affirmative act on the part of the defendant showing an attempt to evade the imposition of the tax."

[fol. 3080] In this case neither the allegations of the indictment (Counts Seven and Nine), nor the theory of the

proof shows any attempt to evade the imposition of the tax, rather the allegations show a mere failure to pay situation.

This Court speaking of the co-defendants of Lawn took cognizance of the difference between the two situations. Thus, at page 1277 of its opinion, this Court said:

> "In addition to their efforts to defeat the imposition of full tax liability, appellants sought in a number of ways to delay, hinder and prevent the collection of those taxes for which they admitted liability."

We have found no case whatsoever in which any court of the United States has held or even suggested that to truthfully report the amount of income and deductions, and the proper tax liability, and then to wilfully attempt to thwart the collection thereof, constitutes a felony. The Supreme Court of the United States has never considered this question.

Only the two cases decided by the Fifth Circuit have, as far as we know, determined this issue, and they have determined it in favor of Lawn's position here.

The prosecution in this case cited *United States* v. *Bardin*, 224 F. 2d 255, 260 (7 Cir. 1955), cert. den. 350 U. S. 883 (1955), as reaching a contrary result. That case was decided on a net worth theory. Count two in the *Bardin* case showed that the taxpayer reported income of only $528,000 and a tax due of $426,000. The government claimed that the taxpayer owed $639,000 of taxes based on taxable income of about $759,000. There, the concealment, if any, was directly related to the imposition and not the collection (payment) of the tax.

A subsidiary point which we wish to call to this Court's attention is: the government must prove, under the charge of the Trial Judge, and as a matter of unquestionable law, that Lawn knew that Giglio and American Brands Corporation owed taxes, had no intention to pay the same, and had [fol. 3081] not in fact paid them. There is absolutely not a scintilla of evidence in the record that Lawn knew any of these things.

Assuming that Lawn is an astute lawyer and, surmising therefore that he must have known these things, these as-

sumptions are no substitute for proof by the prosecution that he knew them. *Legatos* v. *United States*, 222 F. 2d 678, 688 (9 Cir. 1955). Lawn did not testify on the trial and the government witnesses did not ascribe to him the requisite knowledge.

Relief requested herein.

It is submitted that this Court should either reverse the judgment against Lawn on the ground that the prosecution used tainted evidence or else, remand this cause to the District Court with instruction to hold a hearing and to take testimony as to whether the United States Attorney had in his possession—in his own custody or control—any untainted copies of Exhibits 61A and B and to determine, if relevant, the circumstances under which any other copies came into the possession of any branch of the United States Government other than this prosecutor's office.

We further submit that this Court should reverse the conviction of Lawn on Counts Seven and Nine and dismiss those counts of the indictment on the ground that no felony crime is charged or was proved as to Lawn.

Dated: April 25, 1956.

Respectfully submitted, Milton Pollack, Attorney for Appellant, Howard Lawn.

[fol. 3082] Certificate of counsel (omitted in printing).

[fol. 3083] [File endorsement omitted]

[fol. 3084] In United States Court of Appeals
For the Second Circuit

United States of America, Plaintiff-Appellee,

against

William Giglio, Frank Livorsi and
Howard M. Lawn, Defendants-Appellants.

Petition for Rehearing—Filed May 4, 1956

To the United States Court of Appeals for the Second Circuit:

Appellants Giglio and Livorsi hereby petition this court to grant a rehearing of limited aspects of this appeal. The decision of this court was rendered on April 20, 1956.

Appellant Livorsi respectfully requests the court to reconsider its affirmance of his conviction on Count 6 (which relates to his personal return) and Count 8 (which relates to the alleged concealment of his personal assets), a reversal of which would result in the reduction of his fifteen year jail sentence by five years.

Both appellants respectfully request the court to reconsider its decision with respect to their right to a pre-trial hearing concerning the use of tainted evidence in the procurement of the present indictment, as well as their right to a hearing concerning the use of such evidence, or leads and clues therefrom, at the trial, a reversal of which would require a new trial.

[fol. 3085] Appellants shall not attempt to reargue here any of the other issues previously urged upon the court.

As to the Appellant Livorsi

Five years of the fifteen year jail sentence meted out to the appellant Livorsi are predicated upon the alleged falsity of his own personal return for the year 1946 (Count 6) which runs concurrently with the five year sentence on the substantive count which charged concealment of his personal assets (Count 8). The conviction on both of these counts should be reversed as a matter of law.

1. Livorsi's Personal Return.

There is no necessity for reviewing here, as we did in our main brief (pp. 37-49), the testimony with respect to the bitterly contested issue of appellants' distributive shares in the Eatsum and Tavern partnerships; nor shall we review the court's lengthy charge to the jury on that aspect of the case (Br. pp. 49-57). For the purpose of this motion we refer solely to the trial court's direction, at the request of the prosecutor, that in considering the guilt of the defendant Giglio (under Count 5) and the defendant Livorsi (under Count 6), the jury "disregard any income they may have received from Eatsum * * *," and the further direction: "* * * don't consider Eatsum at all, their income from Eatsum at all in connection with Counts 5 and 6" (2730-1).

By withdrawing from the jury's consideration "any income * * * received from Eatsum," the court eliminated income in the amount of $228,288.58 which the Government had attributed to Livorsi and which it contended he should have reported on his personal income tax return for the year 1946 (Ex. 151). Since the Government claimed that Livorsi's total unreported net income, after all adjust-[fol. 3086] ments in favor of the Government, amounted to approximately $138,000 (1904), the court's charge rendered it impossible for Livorsi to be convicted under this count.

In its brief, the Government conceded, as, indeed, it was compelled to do, that the elimination of Eatsum income would result in an overstatement of Livorsi's income on his personal tax return for 1946 "even if Tavern or other income were found to have been fraudulently understated" (Br. G. p. 95). This court, in its opinion, disposed of the issue by stating:

> "In order to avoid this confusing problem in tax law, the judge instructed the jury to disregard alleged *understatement* of income from Eatsum in considering the counts charging the falsification of individual returns. Since, however, there was evidence of understatement of income from sources other than Eatsum, the verdict on these counts must stand." (Italics added.)

The trial judge instructed the jury not to consider Eatsum income "at all" and repeated that they were not to consider "any income" from Eatsum. The trial judge acted on the prosecutor's unambiguous request (2730) that: "We want to eliminate *all* income from Eatsum on Counts 5 and 6." (Emphasis added.) The court did not instruct the jury merely to disregard the alleged *understatement* of income from Eatsum. It directed the jury to disregard *all* income from Eatsum.

Since the elimination of all income from Eatsum results in an overstatement of Livorsi's reportable income on his 1946 tax return, it makes no difference, in a prosecution under I. R. C., Section 145(b), that the Government may have established fraud in other respects. It has been held repeatedly that the Government must prove not only a wilful attempt to defraud, but also an actual tax deficiency. See, for example, *Gleckman* v. *United States*, 8 Cir., 80 [fol. 3087] F. 2d 394; *Tinkoff* v. *United States*, 7 Cir., 86 F. 2d 868; *United States* v. *Schenck*, 2 Cir., 126 F. 2d 702, 704; *Rose* v. *United States*, 10 Cir., 128 F. 2d 622, 626; *United States* v. *Rosenblum*, 7 Cir., 176 F. 2d 321, 329; *Elfmon* v. *United States*, 4 Cir., 209 F. 2d 642, 643; *Legatos* v. *United States*, 9 Cir., 222 F. 2d 678, 688. All of these cases stand for the well-settled proposition that, even where a taxpayer wilfully attempts to defeat and evade the tax, no crime is established under I. R. C., Section 145(b), if the Government fails to prove that he has understated his income. Thus, in Gilman, *Current Problems in Criminal Tax Fraud*, 33 Taxes 749, 752 (October, 1955), the principle is stated as follows:

> "* * * under the law as it is now, a deficiency must be proved in order to sustain the felony conviction under Section 7201." *

2. The Alleged Concealment of Livorsi's Assets.

To run concurrently with the five year sentence on Count 6 (Livorsi's personal return), the court imposed a five year

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* Section 7201 of the 1954 Code is the successor to Section 145(b) of the 1939 Code under which the appellants were prosecuted.

sentence based upon the substantive offense alleged in Count 8, namely, the concealment of Livorsi's assets. The defendant Livorsi was entitled to an acquittal under this count too, since the Government failed to establish, in a prosecution in the Southern District of New York, the constitutional requirement that some element of the alleged offense take place within that district.

Our main brief (pp. 89-90) refers, in detail, to the testimony on this issue and demonstrates beyond possibility of contradiction that all elements of the alleged offense of concealment occurred outside of the Southern District of New York. The Government's brief flatly admits (Br. G. p. 34) that the "only physical *asset* belonging to Livorsi as [fol. 3088] to which there is direct and positive evidence of concealment by Livorsi * * * is his New Jersey estate." (Emphasis in the original.) The Government did not dispute the unquestioned fact that all of the elements of the alleged offense of concealment, in connection with this asset, occurred in New Jersey. The concession, therefore, required a dismissal of Count 8 of the indictment.

In an attempt to overcome its failure to establish the jurisdictional requirement, the Government urged (Br. G. p. 34) that "part" of the concealment of *assets* in New Jersey consisted of Livorsi's alleged concealment of *tax liability*. The use of the word "part" is ambiguous, if not meaningless, in this context. The Government carefully refrained from asserting that concealment of tax liability constitutes an *element* of the offense of concealing assets. Obviously, it does not, for a taxpayer may admit his full and correct tax liability, yet still be guilty of concealing his assets. Yet, the only significant factor, in a consideration of jurisdiction, is whether the Government established that an element of the offense of concealment took place in the Southern District of New York. Clearly, the matters from which the Government sought to infer a concealment of *tax liability* (Br. G. pp. 33-4), if connected in any way with a concealment of assets, constituted mere preparation for that offense and cannot be deemed elements thereof. Even if acts of alleged preparation took place in the Southern District of New York, the district court here lacks jurisdiction of the offense of concealing assets committed in

New Jersey (*Reass* v. *United States*, 4 Cir., 99 F. 2d 752, 755).

The opinion of this court is silent on this important issue which was argued both in our main (pp. 89-90) and reply (pp. 19-21) briefs and which the Government attempted, but failed, to answer in its brief (Br. G. pp. 32-5).

[fol. 3089] As to Appellants Giglio and Livorsi

The appellants should have been, but were not, afforded an opportunity to ascertain (a) prior to the trial whether the indictment was obtained through the use of tainted evidence, and (b) at the trial whether the Government was using tainted evidence or evidence obtained by virtue of leads and clues therefrom.

1. With respect to the possible use of tainted evidence to procure the indictment, this court holds that it was in the sound discretion of the district court to refuse a hearing; that the mere fact that Judge Goddard dismissed the 1952 indictments because of the use of allegedly illegal evidence did not entitle the defendants to a hearing as a matter of law; that this was particularly so in the face of the strong adverse showing made by "the affidavits of the prosecution." The cases cited by this court in support of this proposition, namely, *Nardone* v. *United States*, 308 U. S. 338; *Goldstein* v. *United States*, 316 U. S. 114, affirming *United States* v. *Goldstein*, 2 Cir., 120 F. 2d 485; and *Lapides* v. *United States*, 2 Cir., 215 F. 2d 253, all actually support the appellants' position. See also: *United States* v. *Coplon*, 2 Cir., 185 F. 2d 629. Judge Learned Hand, in *United States* v. *Goldstein*, 120 F. 2d 485 (at p. 488), interpreted the holding of the Supreme Court in *Nardone* to mean that, where the Government has made some use of illegal wiretaps, thereafter it has the burden of demonstrating that its other evidence had an independent origin. In its opinion in the instant case, this court expressly places upon the appellants a burden of proof which the Supreme Court in *Nardone*, and this court in *Goldstein*, imposed upon the Government.

Furthermore, the proposition enunciated by this court, that affidavits submitted by Government agents were sufficient to deprive the appellants of a hearing, runs counter

[fol. 3090] to decisions both in the Supreme Court of the United States and in this court. See *United States ex rel. Accardi* v. *Shaughnessy*, 347 U. S. 260; *United States* v. *Hayman*, 342 U. S. 205, 223; *United States* v. *Pisciotta*, 2 Cir., 199 F. 2d 603; and *Lapides* v. *United States*, 2 Cir., 215 F. 2d 253. In *Shaughnessy*, the Supreme Court ordered a hearing despite the finding by this court that the moving papers asserted a mere "suspicion and belief" regarding the alleged wrongful conduct of the Government.

Judge Goddard dismissed the 1952 indictments because of the violation of the defendants' privilege against self-incrimination before the grand jury. The Government admitted in its brief here (Br. G., p. 73) that "there *was* some significant information in the partnership papers produced by appellants which may have led the 1952 grand jury to indict." (Emphasis in the original.)

Under these circumstances, the defendants have fully established the invasion of their constitutional rights and the use of evidence so obtained, which, according to *Nardone*, *Goldstein* and *Coplon*, places the burden upon the Government to demonstrate the independent origin of its evidence.

2. With respect to the defendants' right to ascertain, during the trial, whether the Government was using tainted evidence or evidence obtained by virtue of leads or clues derived therefrom, this court said:

> "* * * it is clear that appellants had a right of full cross-examination during the trial as to the sources of government exhibits and that they exercised this right on a number of occasions."

As we pointed out in our main brief (pp. 24-7), the defendants were accorded this right only with respect to certain third persons, namely, vendors of merchandise to Tavern, who obviously had no knowledge as to how they [fol. 3091] came to the attention of the Government agents. When, on the other hand, the defendants attempted to examine the only witnesses who had knowledge of the facts, namely, Roth, Present and Leone, they were promptly and sharply foreclosed by the trial court.

Roth, Present and Leone were the key witnesses on this issue. They were thoroughly familiar with all of the defendants' books and records, including the tainted evidence produced before the 1952 grand jury. Roth had kept these books and records in the course of his employment by the Eatsum and Tavern partnerships. Present, in behalf of the Government, took charge of the eighty cartons of documents which the defendants were illegally compelled to produce (84-5). He inventoried the papers produced, then analyzed and audited them (86). Leone presented the case to the 1952 grand jury and, after the indictments found there had been dismissed because of the violation of defendants' privilege against self-incrimination, assisted in presenting the case to the 1953 grand jury which found the present indictment. The examination of these three witnesses, two called by the Government and one proffered by the defendants, presented the only opportunity which the defendants had, at the trial, to ascertain whether the Government was using leads and clues obtained from the tainted evidence. The trial court, in each instance, flatly forbade such an examination.

a. Roth.

During a colloquy in chambers, concerning the court's limitation of the cross-examination of Roth (1344), Mr. Stryker stated that his questions were "directed to really leads and clues that the Government might have used while they illegally had our partnership books, and your Honor asked me, in substance, as I remember it, what the point of my questioning was, and I tried to say to you, very frankly, [fol. 3092] that that was just it, that I was just going right after that, so far as I am allowed to" (1344).

After some discussion, Mr. Wolfram inquired:

> "Isn't it a fact, your Honor, that the only way we can establish whether leads and clues have stemmed from the illegal seizure is through the witnesses as they are presented to us?" (1354)

Although the prosecutor then stated that he did not object to the examination of Roth "about the documents

that he saw" (1354), the court flatly ruled he did not want "to get off into this question of documents, even though you might have no objection to it," and added (1356):

> "* * * I am ready to hold now that in the absence of any further foundation, I am not going to go off into the use of these records before the jury, and I am not going to conduct any side hearing at this time either, because that in itself wouldn't be very feasible."

Mr. Stryker then commented (1356):

> "Well, that settles that, and your Honor's ruling is very clear to me. I will take a very highly respectful exception, and then that subject is over."

b. Present.

Since the court had spoken of a possible "further foundation," it became necessary for defendants, after Present's testimony was concluded, to attempt to pursue a similar inquiry, despite the flat-footed ruling by the court which had prevented the cross-examination of Roth with respect to the subject of leads and clues. At this point, the prosecutor requested a conference with the court (1943). Although he admitted that Present had examined the partnership records produced by the defendants (which production, Judge Goddard had found, violated their privilege [fol. 3093] against self-incrimination) and that a "part of the dismissed indictment was based on those records * * *" (1944), he objected to the cross-examination because it presented "a preliminary question as to the admissibility of evidence, as to the suppression of these leads and clues" (1944) and there was "no further evidence here than there was before Judge Palmieri" (1945). When Mr. Stryker observed that he could not "lay a foundation except [to] start laying" (1945), the court ruled:

> "No, Judge Palmieri said there wasn't enough foundation to start laying one * * * and I think that is about the way I feel about it. I am not going into the subject on the basis of what we have had so far." (1945)

e. Leone.

After the Government had rested, the defendants called Gerome J. Leone, the Assistant United States Attorney who had presented the case to both the 1952 and 1953 grand juries and at whose direction the tainted evidence had been produced by the defendants. The court ruled out all questions directed to this witness concerning leads and clues, in the following colloquy (2136):

> "Mr. Wolfram: And your Honor's ruling covers the question of being able to ask this witness anything about leads and clues or what was presented to the grand jury?
>
> The Court: That's right. If you have any better foundation for that, you come back."

Thus, the record is quite clear that these appellants did not have "a right of full cross-examination during the trial as to the sources of government exhibits * * *," as this court's opinion states. Indeed, they were flatly denied all cross-examination on the issue of leads and clues of the only witnesses through whom they could have established the vital facts.

[fol. 3094] For the foregoing reasons, the appellants Giglio and Livorsi respectfully request this court to grant reargument.

Dated: May 4, 1956.

Respectfully submitted,

Harold W. Wolfram, Attorney for Appellants, Giglio and Livorsi.

Certificate of Counsel (omitted in printing).

[fol. 3096] IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Present: HON. CHARLES E. CLARK, *Chief Judge*, HON. HAROLD R. MEDINA, *Circuit Judge*, HON. C. G. GALSTON, *District Judge*.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

WILLIAM GIGLIO, FRANK LIVORSI, and HOWARD LAWN, Defendants-Appellants,

LOUIS J. ROTH and AMERICAN BRANDS CORPORATION, Defendants.

ORDER DENYING REHEARING—May 8, 1956

A petition for a rehearing having been filed herein by counsel for the Appellant, Lawn,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

A. Daniel Fusaro, Clerk.

[fol. 3098] IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Present: HON. CHARLES E. CLARK, *Chief Judge*, HON. HAROLD R. MEDINA, *Circuit Judge*, HON. CLARENCE G. GALSTON, *District Judge*.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

—against—

WILLIAM GIGLIO, FRANK LIVORSI and HOWARD M. LAWN, Defendants-Appellants.

ORDER DENYING REHEARING—May 10, 1956

A petition for a rehearing having been filed herein by counsel for the appellants, Giglio and Livorsi

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

A. Daniel Fusaro, Clerk.

[fol. 3099] Clerk's Certificate to foregoing transcript omitted in printing.

Exhibit 61A

(See Opposite) ☞

THIS CHECK IS ISSUED IN PAYMENT OF ITEMS AS PER STATEMENT FOLLOWING ENDORSEMENT OF PAYEE WILL CONSTITUTE A RECEIPT IN FULL.

DATE		AMOUNT	
TOTAL			
DISCOUNT			
NET			

TAVERN FRUIT JUICE CO.

360-8 TROUTMAN STREET
Brooklyn, N. Y.

B

No. 640

WEDNESDAY NOV 7 1945

PAY TO THE ORDER OF Howard M. Chaiken BROOKLYN, N. Y., 19

$ 15,000.00/100

Fifteen Thousand and 00/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY OF NEW YORK.

1-127

BROADWAY AND 24TH STREET
NEW YORK, N. Y.

TAVERN FRUIT JUICE CO.

Frank Tavern

PAY TO THE ORDER OF AN
BANK, BANKER OR TRUST CO.
OR THROUGH THE
NEW YORK CLEARING HOUSE

NOV

NOV

PRIOR ENDORSEMENTS GUARANTEED 1002

BANK OF

1-2 NEW YORK 2

ORIGINAL

Howard M. Chaiken

2362.0
F

58450 51
+ 60.80
58389 71

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+

THIS CHECK IS ISSUED IN PAYMENT OF ITEMS AS PER STATEMENT FOLLOWING ENDORSEMENT OF PAYEE WILL CONSTITUTE A RECEIPT IN FULL

DATE	AMOUNT
TOTAL	
DISCOUNT	
NET	

Government Liquor Co.
P.O. Box N.Y. Pier 61
N.D. Dock

TAVERN FRUIT JUICE CO.

309-9 TROUTMAN STREET
Brooklyn, N. Y.

B

NO. 640

BROOKLYN, N. Y., WEDNESDAY NOV 7 19[illegible]

PAY TO THE ORDER OF Harold L. Evans

$ 15,000.00

Fifteen Thousand and 00/100 DOLLARS

PAYABLE THROUGH NEW YORK CLEARING HOUSE

TO THE PUBLIC NATIONAL BANK AND TRUST COMPANY OF NEW YORK.

BROADWAY AND 24TH STREET
NEW YORK, N. Y.

J-127

TAVERN FRUIT JUICE CO.

47

PAY TO THE ORDER OF AN[illegible]
[illegible] SANGER or TRUST CO[illegible]
OR THROUGH THE
NEW YORK CLEARING HOUSE

NOV [illegible]

PRIOR [illegible] NOV [illegible] Number 1 0 0 2

BANK OF [illegible]
NEW YORK

23620

PHOTOSTAT

Abstract

No. 638

MONDAY NOV 5 1945 19

ORDER OF

HOLLOWAY CORP

ON A/C FOR SYRUP 2000 -

Government Exhibit 4 S.D. Court S.D. at N.Y. Jan. 26, 1935

INQUIRIES REGARDING LOANS, BOTH BUSINESS AND INDIVIDUAL, ARE RESPECTFULLY INVITED

No. 639

MONDAY NOV 5 1945 19

ORDER OF

STEIN-HALL & Co INC

IF NOT AGREED #35½.

15 DRUMS - AGREED #35½. 3770 --

A SAFE DEPOSIT BOX IS POSITIVE PROTECTION FOR YOUR VALUABLES

No. 640

WEDNESDAY NOV 7 [redacted] 19

ORDER OF

HOWARD LAWN

(BILL G) 15000 -

10990

UNITED STATES
U. S. MAIL
JUL 15 1968

+ 58450 5
60.80
58389 7

JUL 15 1958

JUL 15 1958

(See Opposite)

ORIGINAL

No. 638

MONDAY NOV 3 1945 19

ORDER OF

HOLLOWAY CORP.

ON A/C FOR SYRUP. 2000-

INQUIRIES REGARDING LOANS, BOTH BUSINESS AND INDIVIDUAL, ARE RESPECTFULLY INVITED

No. 639

MONDAY NOV 5 1945 19

ORDER OF

STEIN-HALL & Co INC

15 DRUMS - AGASET #356.

ORDER OF

STEIN-HALL & Co INC

15 DRUMS - AGASET #356. 3990-

A SAFE DEPOSIT BOX IS POSITIVE PROTECTION FOR YOUR VALUABLES

No. 640

WEDNESDAY NOV 7 [illegible] 19

ORDER OF

HOWARD LAWN

15000-

(BILL G)

10990

[fol. 3103] Clerk's Certificate to foregoing papers omitted in printing.

[fol. 3104] SUPREME COURT OF THE UNITED STATES

No. 131, October Term, 1956

HOWARD LAWN, Petitioner,

v.

UNITED STATES OF AMERICA.

ORDER ALLOWING CERTIORARI—Filed October 15, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 3106] SUPREME COURT OF THE UNITED STATES

No. 133, October Term, 1956

WILLIAM GIGLIO and FRANK LIVORSI, Petitioners,

v.

UNITED STATES OF AMERICA.

ORDER ALLOWING CERTIORARI—Filed October 15, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, and the case is transferred to the summary calendar and is assigned for argument immediately following No. 131.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.